



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

February 21, 2018

Dr. Roger Schultz
President
Mt. San Jacinto College
1499 North State Street
San Jacinto CA 92583

(In reply, please refer to case no. 09-17-2141.)

Dear President Schultz:

The U.S. Department of Education, Office for Civil Rights (OCR) has resolved the above-referenced complaint against the Mt. San Jacinto College (College). The Complainant¹ alleged that the College discriminated against him on the basis of disability. Specifically, OCR investigated whether the College responded adequately to the Complainant's complaints alleging disability discrimination.

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 education system, the District is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR reviewed documents and other information provided by the Complainant and the College. After careful review of the information gathered in the investigation, we concluded that the College did not violate Section 504 and Title II and their implementing regulations by subjecting the Complainant to disability discrimination by two of his instructors, but did violate Section 504 and Title II and their implementing regulations because it failed to notify the Complainant with determinations about the results of its investigation into his internal disability discrimination complaints. This letter summarizes the applicable legal standards, the facts gathered to date during the investigation, and the terms of the resolution reached with the College.

¹ OCR previously provided the College with the identity of the Complainant, and we are withholding names from this letter to protect personal privacy.

Issue 1: Whether the College responded adequately to the Complainant's complaints alleging disability discrimination.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Colleges are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of a student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

Colleges provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious to deny or limit a student's ability to participate in or benefit from the program, the college is responsible for the discriminatory conduct whether or not it has notice.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the college is responsible for determining what occurred and responding appropriately. OCR evaluates the appropriateness of the responsive action by assessing whether it was prompt and effective. What constitutes a reasonable response to alleged harassment will differ depending upon 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 harassment, eliminate the hostile environment if one has been created, and address the problems experienced by the student who was harassed. The college must also take steps to prevent the harassment from recurring, including disciplining the harasser where appropriate.

In addition, the Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination, including harassment. These requirements include issuance of notice that disability discrimination is prohibited (34 C.F.R. §104.8 and 28 C.F.R. §35.106) and adoption and publication of grievance procedures providing for the prompt and equitable resolution of complaints of disability discrimination (34 C.F.R. §104.7(b) and 28 C.F.R. §35.107(b)). The regulations also require that recipients/public entities designate at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. §104.7(a) and 28 C.F.R. §35.107(a)).

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 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.

When OCR investigates an allegation of retaliation, it examines whether an individual experienced an adverse action caused by the college, and the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future, and there is some evidence of a causal connection between the adverse action and the protected activity so that OCR is able to conclude an inference of unlawful retaliation is raised. OCR will then determine if a college has identified a facially legitimate, non-retaliatory reason for the adverse action. If a college identifies a facially legitimate, non-retaliatory reason for the adverse action, OCR next conducts a pretext inquiry to determine whether this reason is genuine or is a cover for retaliation. OCR examines all available evidence to determine whether the recipient's proffered reasons are credible and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

Facts

- After first briefly attending the College in the early 2000s, the Complainant, an individual with a disability, enrolled in several sequential 2016 terms, including the one relevant to this complaint, Fall, 2016, in which he took two courses from one art instructor (Art Instructor), and one course in sociology from the Sociology Instructor. He registered on August XX, 2016 with the College Disabled Students Programs & Services (DSPS) office and had accommodations listed in a plan that included use of an adjustable table, and priority registration.
- For the Fall, 2016 semester, the Complainant received the grade of "F" in Art XXX (XX XXXXXX), the grade of "D" in Art XXX (XXXXXXXXXX XXXXXXXX), and the grade of "C" in Sociology XXX (XXXXXXXXXX XX XXXXXXXX), and the grade of "B" in English XXX (XXXXXXXX XX XXXXXXXX XXX XXXXXXXX).
- The Complainant filed at least seven complaints with the College both verbally during meetings and in writing during the Fall, 2016 semester.
- On November X, 2016, the Art Instructor emailed the Dean of Instruction a copy of the email she sent that day to the Complainant in which she stated that she warned the Complainant about disrespectful/disruptive behavior in class that day. The Art Instructor wrote that in class, the Complainant appeared very agitated, frustrated, and verbally attacked her at the end of class. The Art Instructor's email to the Complainant, among other things, explained to the Complainant that his angry and loud declaration in class that the art class was a waste of his time was clearly audible to other students in the class, violated her class behavior policy and warranted the written warning for the violation of the class behavior policy. She wrote in the email that the Complainant had demonstrated a great deal of learning in the class, and she recognized that the Complainant had pushed himself beyond his

comfort zone and understood design and the creative process more fully than at the beginning of the semester.

- The Art Instructor described the Complainant's behavior prior to November X, 2016 as asking questions respectfully in class, with regular attendance, but that near the end of October, 2016, the Complainant started making exaggerated sighs when she passed his table area, put his head down on the table like he was sleeping when she was showing new assignment images, and used an increasingly complaining tone in his questions.
- The Complainant claimed in his OCR complaint that the Sociology Instructor expressed frustration at the Complainant when he asked a question and gave him unpleasant looks.
- The Complainant stated to OCR that he filed a complaint about the Sociology Instructor on November X, 2016 with the Dean of Instruction by leaving a letter with a staff member in that office. The Complainant did not provide a copy of this complaint to OCR, and the College did not provide a copy of this complaint in its response to OCR's data request.
- The Complainant stated in his OCR complaint that on November X, 2016, in Art XXX class, he and the Art Instructor were discussing a class project in class after the Art Instructor had repeatedly edited his project and told the Complainant that there were things wrong with the way he had tried to complete the project. He stated that the Art Instructor spoke very loudly, almost screaming at him, and that she was never satisfied with his corrections to the project. The Complainant stated that the discussion became an argument, and that the Art Instructor told him he was wasting his time in school before the argument ended. After this in-class argument with the Art Instructor, the Complainant stated that he went to discuss it with the Dean of Instruction. He did not speak with the Dean of Instruction, but stated he was asked by the Instructional Services Division's Articulation Officer, first, to take his concerns about the Art Instructor to the DSPS office, and then to the College's counseling department (Student Success & Support Programs). He stated he went to the counseling department, but they referred him back to the Dean of Instruction's office.
- The College's Judicial Affairs Director (Director) stated that he met with the Complainant on November X, 2016, due to the unavailability of the Dean of Instruction. During this meeting, the Complainant described issues he was having in art and Sociology classes, but, according to the Director, never mentioned a concern about discrimination, or being treated unfairly on the basis of his disability during this conversation.
- On November X, 2016, the Complainant filed a complaint with the Director that did not state that he was being discriminated against. The complaint did generally detail the Complainant's objections to the teaching style of the Art Instructor in Art XXX. The complaint stated that the Complainant and the Art Instructor argued on November X, 2016 in class about a project that the Complainant had been

repeatedly making changes to because the Art Instructor kept telling him things were wrong with the project and criticizing his course work.

- On November XX, 2016, an incident occurred in the Art XXX class that resulted in the Complainant being removed from the class. While accounts of the Art Instructor and the Complainant about this incident differ, they agree that the Complainant was involved in a verbal dispute with another student, that the Instructor asked the Complainant to leave the room, and that when he did not do so, the Instructor summoned security personnel, who escorted the Complainant from the class.
- The Complainant visited the office of the Dean of Instruction's on November XX, 2016 to discuss the incident in the Art XXX class. According to the Dean of Instruction's notes, the Dean told the Complainant that he should have left the class when he was first asked to do so, and that not following the instructions of a faculty member or College official would lead to a student conduct violation report. He wrote that the Complainant told him that the Art Instructor treated him more harshly and unfairly criticized his work compared to other students. He also wrote that he and the Art Instructor had previously met about the Complainant, and the Art Instructor was concerned about the Complainant's refusal to follow directions, about him becoming hostile when getting any feedback, and was continually challenging the Art Instructor, going on for long periods, asking question after question.
- The Dean of Instruction's notes about the November XX, 2016 meeting with the Complainant included information about the Complainant informing him that the Complainant felt that the Sociology Instructor was inappropriate, mocking his disability, and that the Sociology Instructor did not treat students fairly. The Dean of Instruction wrote that he spoke with the Sociology Instructor and was informed that the Complainant was continually challenging her in the class, and refused to participate in group work and projects.
- The Dean of Instruction wrote in his notes about the November XX, 2016 meeting with the Complainant that two students from the Sociology XXX class visited him about the Complainant, and told the Dean that the Complainant made it very difficult for the Sociology Instructor to be effective in class because the Complainant constantly interrupted and challenged the Sociology Instructor, and that the Complainant often refused to participate in their group activities or other in-class work.
- On November XX, 2016, the Complainant emailed the College President about his issues with the Art and Sociology Instructors, but did not claim or mention discrimination. The Complainant's email stated he had filed complaints about the two instructors with the Director and the Dean of Instruction, after which the Complainant asked the President for assistance in receiving his assignments from the Art Instructor for the remainder of the semester so that he could keep his grades up. He stated his grades had fallen in both classes since filing complaints.

- On November XX, 2016, the President responded by email to the Complainant, the Director and others. On November XX, 2016, the Director emailed the Complainant, asking the Complainant to look for an email to schedule a meeting with the Director the following Tuesday. The Complainant replied by email November XX, 2016, and claimed that the Director had not responded to his prior complaints, and that as a student with a disability, he was not given a fair chance and felt he had been discriminated against.
- On November XX, 2016, the Director emailed the Complainant to request a meeting for November XX, 2016 to discuss the November XXXX incident in Art XXX.
- On November XX, 2016, the Director emailed the Complainant asking the Complainant to attend a scheduled meeting the next day, November XX, to discuss all of the Complainant's issues. The Complainant responded by email the same day, stating he would have to reschedule because "I do not know what the meeting is about" and that he wanted to have his representative with him who was not available until November XX, 2016.
- On November XX, 2016, the Director emailed the Complainant, explaining that the November XX meeting was an opportunity to discuss the Art XXX incident and for the Director to get the Complainant's side of the story, as he already spoke with "the other side." He described the meeting as not normally a combative meeting, but an opportunity to work together to ensure that the Complainant has the best opportunity for success within the published policies at the College. He wrote in the email that he did not believe the Complainant needed representation at the meeting, and would be available at the place and time of the November XX meeting for the Complainant to take the opportunity to come by his office at that time. The Complainant replied by email that he would not attend the November XX meeting without his representative.
- On November XX, 2016, the Director emailed the Complainant that under College procedures, the Complainant was required to meet with the Director about the student conduct violation reports and that the Complainant could not return to Art XXX until meeting with him. He noted that class assignments and PowerPoints were available in Blackboard, the College's electronic system, but that there were graded class activities the Complainant would miss out on, making meeting quickly with him in the Complainant's best interests so the Complainant could return to class and have the opportunity to earn all the points in class that he could.
- The Director's November XX, 2016 email to the Complainant also stated that separate from the student conduct violation issue was the Complainant's disability charge which was being handled under the College's Student Grievance Process, and the Director offered to discuss the Student Grievance Process with the Complainant when they met about the student conduct violation reports. The Director also noted that if the Complainant had any concerns about services he was receiving from the College regarding his disability, he could schedule an

appointment with the Director and the DSPS Director to ensure that he was receiving the proper accommodations for any educational limitations created by his disability.

- The Complainant wrote in his OCR complaint that on November XX, 2016, he and his mother met with the Director and that the Director talked about wanting to check on the Complainant's wellbeing, tried to convince the Complainant to go back to class, accused him of being combative, and told him how he could file more complaints.
- The Director stated in a declaration to OCR that during the meeting with the Complainant and his mother, the Director informed the Complainant that despite his disability, he had to follow standard classroom protocol, and that he was subject to the same student conduct standards as all students. The Director stated that the Complainant admitted to disrupting the Art XXX class, and therefore the Director found the Complainant responsible for a disruption for the November X and the November XX, 2016 incidents, and that he gave the Complainant the consequence of a verbal warning as a sanction for each incident.
- The Director stated in a declaration to OCR that the other topic during the meeting was the "other issues" the Complainant was having, and the Director explained to the Complainant step-by-step the grievance process, and showed him where to find it on the website where the *Student Grievance Form* was also located. The notes make no mention of any discussion during the meeting about the Complainant's November XX, 2016 email in which the Complainant raised disability discrimination.
- The Director stated in a declaration to OCR that during the November 29 meeting, the Complainant's mother referred to disability-related training required by her employer and that his response was the College also had its own training requirements, but that the two instructors mentioned by the Complainant had worked with students with disabilities for years without incident, and were well known to the DSPS program as being instructors who would go out of their way to assist disabled students and would treat students with disabilities fairly. He wrote that during the meeting, he responded to the Complainant's inquiry about the College grievance process section that dealt with resolution, noting that some students might ask for an instructor to be fired which was outside of the scope of the process, and that it was unlikely his office would compel instructors to take eight hours of disability awareness training.
- The Director also stated that during the November XX meeting, he suggested that the Complainant finish his classwork for Art classes and submit it online. He stated that the Complainant, at no time during the hour-long meeting on November XX, expressed that he had any fear of the Art Instructor.

- The Dean of Instruction emailed the Complainant on December X, 2016, stating he was aware the Complainant met with the Director about the November XX, 2016 Art XXX incident, and that the Complainant was free to return immediately to Art XXX class as the Art Instructor welcomed his return with the expectation that the Complainant would focus on contributing to a productive class environment for all students. The Dean of Instruction encouraged the Complainant to contact the Art Instructor immediately.
- On December X, 2016, the Complainant emailed the Director asking questions about how to complete the *Student Grievance Form* as he was unsure whether to file one or more forms for each of the instructors about whom he had complaints. He also stated he was unsure where or to whom he should turn in his completed Art class assignments. The Director responded by email, advising the Complainant to file a *Form* for each instructor with as much detail as necessary for him to review and to investigate the incidents. The Director reminded the Complainant of the Dean of Instruction's December X, 2016 email in which the Dean of Instruction informed the Complainant to return to Art XXX because the Art Instructor welcomed the Complainant back into the class, and he suggested that the Complainant turn in his assignments to the Art Instructor directly.
- The Complainant in his OCR complaint stated that on December X, 2016, he turned in Art XXX assignments to the Learning Center. He wrote that he did not feel safe in the Art Instructor's classes because of the events that had taken place, the Art Instructor's intimidation and calling security to have him leave class, and that he had not been back to either Art XXX, or Art XXX since.
- On December X, 2016, the Complainant filed a complaint with the Director, and used the College's *Student Grievance Form* in which he identified the Art Instructor as the subject of the complaint. The Complainant did not claim on the complaint form that he was being discriminated against, but he did request, as a remedy, training by the disabled students program. The complaint repeated the narrative chronology with the same text from the Complainant's November X, 2016 complaint about Art XXX, and it also added the Complainant's views of a new incident on November XX, 2016 in Art XXX when he was asked to leave class. The complaint stated that the Art Instructor had not stopped discriminating, and had retaliated by giving him "Fs" and "Os" on assignments for no reason.
- Interview notes taken by the Director indicated that he interviewed the Art Instructor on December XX, 2016 about the November XX, 2016, Art XXX incident.
- The Complainant filed another complaint on December X, 2016 with the Director using the College's *Student Grievance Form* in which he identified the Sociology Instructor as the subject of the complaint. The Complainant did not indicate on the complaint form that he was being discriminated against, but he did request, as a remedy, training by the students with disabilities program. In the complaint's attached narrative, the Complainant described an undated incident on one occasion

in class when he felt he was being unfairly criticized by the Sociology Instructor for putting his books in his bag to prepare to leave class when she was still lecturing. The narrative also included the Complainant's concern that during a lecture by the Sociology Instructor on the topic of discrimination, the Sociology Instructor made what the complainant believed was a joke in class that was directed at him because he uses a wheelchair. He wrote that he had spoken in class to describe discrimination he experienced while at a restaurant, and the Sociology Instructor said in response, "Well, why didn't you stand up for yourself?" and that other students in the class laughed.

- The December X, 2016 complaint about the Sociology Instructor repeated the Complainant's allegation that the Sociology Instructor had not stopped discriminating, and had retaliated by giving him "Fs" and "Os" on assignments for no reason.
- The Director interviewed the Sociology Instructor on December XX, 2016 about the December X, 2016 complaint. Notes from that interview stated that the Sociology Instructor stated to the Director that there was more to the comment she made to the class about standing up for yourself because it made was in the context of students standing up for their rights.
- Regarding the December X, 2016 complaint, the College provided statements to OCR that were made on December XX, and XX, 2016 by three Sociology XXX students regarding their experience with the Complainant in Sociology XXX. Student 1 identified the Complainant as having been disruptive in class, and having belittled the Sociology Instructor during class while also making his personal problems known during class time.
- Student 1 wrote that as far as the Sociology Instructor's comments about standing up for oneself, she thought the Sociology Instructor was being "genuine" in her comment that students should stand up for themselves.
- The Complainant stated in his OCR complaint that the Sociology Instructor continued to point out people with disabilities as part of her lectures. He stated that, during a movie shown in class on December X, 2016, the Sociology Instructor purposefully fast-forwarded the movie and stopped on scenes involving students with disabilities, looking at him every single time. He wrote that the Sociology Instructor paused the movie, and told the class that the student in the movie was "retarded", and that people were trying to make the student feel as though she could not accomplish anything, and then looked at the Complainant and said, "You can do it" to him. He wrote that the Sociology Instructor fast-forwarded the movie so that she could insinuate that the Complainant had an intellectual disability.
- On December XX, 2016, the Complainant filed a complaint with the Director using the College's *Student Grievance Form*, on which he identified the Art Instructor as the subject of the complaint. The Complainant did not claim on the complaint form that he was being discriminated against, and requested, as a remedy, to receive a

grade of “B” in the Art XXX class that he claimed he deserved. The complaint stated that he logged into the College’s electronic portal to check his grades, and saw that his grade for Art XXX and Art XXX was an “F.” The complaint stated that the Art Instructor was retaliating against him because of his prior complaints by not giving him credit for assignments, trying to intimidate him, calling the Sherriff’s department about him, and failing him in both of the art classes.

- The Director wrote a January XX, 2017 Grievance Investigative Report about an investigation that started December X, 2016 (delayed by the Director’s schedule conflicts) to determine the facts about “a grievance” filed by the Complainant against the Art Instructor. The Director appears to have interviewed the Art Instructor, the Complainant and his mother, and the Dean of Instruction. The Report concluded that the complaint about the Art Instructor was based on the Complainant and Art Instructor’s differing opinions about the incidents of November X and XX, which the Complainant took as slights against him, and the Art Instructor took as willful defiance of her authority within the classroom. The Director wrote a recommendation that the Vice President should deny the grievance. However, OCR has no information whether the Director completed this Report, or submitted it to anyone.
- In an undated narrative, the Director wrote a summary about what he did and did not do regarding the Complainant’s complaints, including a statement acknowledgement that he had failed to adequately communicate with the Complainant about his complaints.
- The Complainant pointed out that he believed he had a passing grade in Sociology before November XX, 2016, the date the Complainant said the Sherriff told him the Art Instructor did not want him to return to either art class. Between November XX and November XX, 2016 he received zero points on four graded Sociology assignments, but he received perfect scores and maximum points for the three remaining Sociology assignments that were graded on November XX, 2016.
- The Complainant pointed out that he believed he had a passing grade in Art XXX and Art XXX on November XX, 2016, the date the Complainant said the Sherriff told him the Art Instructor did not want him to return to either art class. He did not return to either art class, despite being emailed starting around November XX, 2016 to do so, and received an “F” grade on seven of the eight remaining art graded activities in both art classes that he did not complete, and a “C” grade on the eighth graded art activity which was his participation grade for the semester in Art XXX.

Analysis and Conclusion

In determining whether a college or university has adequately responded to complaints of discrimination, OCR first thoroughly reviews all documentation of the College’s investigation and resolution of the complaint to determine whether the College 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 College

has not met these requirements, OCR will conduct its own independent investigation or develop a remedy appropriate to address the issue of noncompliance.

The College received at least seven complaints from the Complainant both verbally during meetings and in writing. Of those, four raised some form of alleged discrimination. The first two times the Complainant alleged some form of discrimination occurred on November XX, 2016 and November XX, 2016. On November XX, 2016, in his meeting with the Dean of Instruction, the Complainant stated that he believed the Sociology Instructor mocked his disability. On November XX, 2016, in an email response in a chain of emails including the Director, the Complainant, amongst other things, stated that as a student with a disability he was not given a fair chance and felt he had been discriminated against. In response to these allegations, on November XX, 2016, the Director emailed the Complainant stating that his allegations of disability discrimination are ones handled under the College's Student Grievance Process and also informing him that if he had concerns about disability related services he could meet with the Director and the DSPS Director to ensure he was receiving proper accommodations. Additionally, the College Director reviewed the College's grievance process with the Complainant and his mother during a November XX, 2016 meeting. At that point, the Complainant did not provide more specific information regarding how he was mocked or why he believed he was not being treated fairly. To obtain information specific enough for the College to be able to investigate his concerns, the College would need to obtain more information from the Complainant for specific information. OCR finds that providing the Complainant information about the College's policies for how to file a complaint and offering to schedule a meeting with DSPS are sufficiently appropriate responses to the Complainant's vague allegations.

The Complainant then submitted several written grievances, three of which could be considered to contain within them allegations of disability discrimination. Specifically, on December X, 2016, the Complainant submitted two written grievances, and on December XX, 2016, he submitted another written grievance. One of his December X, 2016, grievances was about his Sociology professor, alleging that on one occasion the Sociology professor made a joke in class directed at him in which she stated that he should have responded to discrimination at a restaurant and stated, "Well, why didn't you stand up for yourself?" and that other students laughed at this comment. The Complainant also alleged that the Sociology instructor "had not stopped discriminating" and had retaliated by giving him "Fs" and "Os" for no reason. The Complainant made two written grievances (one on December X and one on December XX) about his Art Instructor alleging, amongst other things, that the Art Instructor "had not stopped discriminating", and had retaliated by giving him "Fs" and "Os" on assignments, trying to intimidate him, calling the Sherriff's department about him and failing him in his classes.

With regard to the December X, 2016 complaint against the Sociology Instructor, the College took the following steps. The Director interviewed the Sociology Instructor about the allegations and reviewed statements provided by three Sociology students regarding their experience with the Complainant in the class. The Sociology instructor stated that she made the statement to the class about standing up for themselves and

for their rights and to be advocates for their education. The student statements focused on complaints about the Complainant's behavior in class. One statement referenced the discussion in which the Sociology Instructor had told the Complainant to stand up for himself. That student recalled that it was made genuinely. The Director acknowledged that he did not provide a response to the Complainant about this allegation.

With regard to the December X and December XX complaints about the Art Instructor, the College took the following steps. The Director wrote a Grievance Investigative Report dated January XX, 2017. Though the Director interviewed the Art Instructor, the Complainant and his mother, and the Dean of Instruction about the allegations and made a determination that the Complainant was not subjected to discrimination, the results of this investigation were not communicated to the Complainant.

OCR finds that the College's acknowledged failure to provide the Complainant with determinations about the results of its investigation into his discrimination allegations fails to satisfy the requirements under Section 504 and Title II for the College to respond promptly and equitably to complaints of disability-based discrimination. For this reason, OCR reviewed the underlying discrimination allegations.

In its own review of the alleged discrimination, OCR found the following. With regard to the alleged discrimination by the Sociology Instructor, the Complainant alleged that the Sociology Instructor told him once mockingly to "stand up" for himself and the Complainant also alleged to OCR in his OCR complaint that the Sociology Instructor showed a movie to the class in which she fast-forwarded and paused the movie to reach scenes showing a disabled individual who was revealed in the movie as retarded. At this point, the Complainant alleged that the Instructor looked at the Complainant and said, "You can do it", and that this was done to insinuate that the Complainant had a similar disability. With regard to the statement to "stand up" for himself, interviews conducted by the College (the Instructor's statement and one student's statement) provide evidence that the statement was meant to be encouraging and supportive. With regard to the alleged movie incident, OCR found no evidence that the Complainant ever raised this concern with the College in any of his complaints or communications with the College.

Even if OCR found that the Sociology Instructor made both statements to the Complainant – "stand up" for yourself and "You can do it", given the witness statements about the context of at least one of the statements, on their own, OCR would not be able to establish that the statements rise to the level of disability-based discriminatory harassment. The Complainant also alleged that he received "F" and "0" grades by the Sociology Instructor due to his disability, but the only evidence the Complainant provided to support this assertion showed that the low grades on those few assignments were due to the Complainant's failure to complete the assignments. As such, for the foregoing reasons, OCR finds that there is insufficient evidence that the Complainant was subjected to disability-based discrimination by the Sociology Instructor.

With regard to the alleged discrimination by the Art Instructor, the Complainant alleged that the Art Instructor retaliated against him by giving him “F” and “0” grades and trying to intimidate him by calling the Sherriff’s department. When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the College, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the College can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation. To constitute protected activity, OCR must find that: 1) an individual communicated, formally or informally, a belief that the College’s act or policy is discriminatory on the basis of disability; 2) the manner of the opposition is reasonable; and 3) the complainant has a good faith and objectively reasonable, though perhaps mistaken, belief that he or she was opposing unlawful discrimination. It is irrelevant whether the individual in fact erred, as a matter of fact or a matter of law, in his or her belief that illegal discrimination occurred.

In this case, the Complainant engaged in protected activity in mid-November and in early December when he verbally or in writing complained of discrimination based on disability. Prior to that, although the Complainant complained to the Instructor and the College, the complaints did not allege disability-based discrimination and therefore did not engage in protected activity. OCR then examined whether the Complainant was subjected to an adverse action. The Complainant asserts that he received “Fs” and “0s” by the Art Instructor and that the instructor tried to intimidate him by calling the Sherriff’s office. Being given failing grades and having law enforcement called are both actions that could well dissuade a reasonable person from making or supporting a charge of discrimination. As such, the Complainant was subjected to adverse actions. Because the Complainant’s final grades in the class occurred at the end of the course and after he made his complaints, OCR finds that a nexus is established between the protected activity and adverse action. However, OCR did not find such a nexus with regard to the Sheriff incident, because that occurred prior to the Complainant’s complaint. Thus, OCR determined that the incident with regard to the Sheriff was not retaliatory.

With regard to the grades, OCR finds that the evidence provided by both the Complainant and College establish legitimate non-retaliatory reasons for the Complainant’s grades in the class. Specifically, the evidence showed that while the Sheriff informed the Complainant the Art Instructor did not wish him to return on November XX, 2016 to either art class, the Complainant was informed by email around November XX, 2016 to return to class, and also prior to that, to turn in all assignments, but OCR found that the Complainant did neither. The evidence also showed that prior to alleging disability-based discrimination, there is evidence that the Complainant was having some minor challenges in the class. For example, in early November, the Complainant allegedly loudly proclaimed that the Art class was a waste of his time. The Complainant himself acknowledged that the Art Instructor had repeatedly edited his

project and the Complainant disagreed with the Art Instructor's teaching style. The Complainant noted to OCR that prior to filing his complaint he had fallen behind in art class due to repeated criticism of his assignment by his Art Instructor. As such, OCR finds that there is insufficient evidence that the Complainant's lower grades were due to retaliation. For these reasons, OCR finds insufficient evidence that the Complainant was subjected to discrimination by the Art Instructor.

Though OCR found insufficient evidence that the Complainant was subjected to discrimination by his Sociology and Art Instructor, as described above, OCR found that the College's failure to communicate a determination regarding the Complainant's discrimination allegations to him failed to meet the requirements of Section 504 and Title II. When OCR notified the College of its findings, the College, without admitting to any violation of federal law, voluntarily agreed to enter into the enclosed Resolution Agreement with OCR to resolve the complaint. Under the terms of the Agreement, the College will compose, receive OCR approval of, and then circulate a guidance memorandum to administrators and others involved in the resolution of disability discrimination complaints which summarizes the steps in the College discrimination complaint resolution procedure, including the requirement to provide notice of the outcome of an investigation.

When fully implemented, the resolution agreement is intended to address OCR's non-compliance finding in this investigation. OCR will monitor the implementation of agreement until the College is in compliance with the statute and regulations which were at issue in the case.

Based on the above referenced agreement, OCR is closing the investigation phase of this case. This concludes OCR's investigation of this complaint and 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. Based on the commitments made in the Agreement, OCR is closing this complaint as of the date of this letter and notifying the Complainant concurrently.

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.

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 Complainants 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, we will seek to protect, to the extent provided by law, personally

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

Thank you for your cooperation in resolving this case. If you have any questions about this letter, please contact the case resolution team.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader

cc: John Colson, Ed.D.
Vice President, Student Services (*via electronic copy only*)

Enclosure