



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

April 27, 2023

VIA ELECTRONIC MAIL

Kindred Murillo, Ed.D.  
President  
Santa Barbara City College  
[kellyp@sbcc.edu](mailto:kellyp@sbcc.edu)

Re: OCR Complaint No. 09-22-2342

Dear President Murillo:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Santa Barbara City College (College). The complainant alleged that the College discriminated against her (the Student) on the basis of disability.<sup>1</sup> Specifically, OCR investigated the following issue:

The College failed to provide the Student with an approved accommodation, specifically copies of PowerPoint/lecture presentations, which was necessary to ensure that she could participate in the education program in a nondiscriminatory manner.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving 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. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the College is subject to Section 504 and Title II.

To investigate this complaint, OCR conducted interviews and reviewed documents and other information provided by the Student and the College. Prior to OCR completing its investigation and making a compliance determination, the College expressed an interest in voluntary resolution pursuant to section 302 of OCR's Case Processing Manual (CPM), and OCR determined it was

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<sup>1</sup> OCR previously provided the College with the identity of the Student. We are withholding their name from this letter to protect their privacy.

appropriate to do so. The legal standards, facts gathered, and the reasons for OCR's determinations are summarized below.

### 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 a recipient College to make modifications to its 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 a recipient College 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), a public College 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), a public College 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 a public College to provide necessary academic adjustments to the same extent as is required under the Section 504 regulations.

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the College of the nature of the disability and the need for a modification, adjustment, aid or service. Once a College receives such notice it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the College may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

### Facts

On July XX, 2021, the Student received approval for the following accommodations: audiobooks, E-text for course materials and books, text-to-speech software, audio recorded lecture, peer notes, copy of class presentation materials, priority registration, tutoring, disability counseling, online test booking, extended time on tests (1.5x) and testing in a distraction reduced environment. The Student also received instruction how to request accommodations from professors/instructors.

The Student was enrolled in a XXXXX XXXXXXXXXX class in spring of 2022. The semester commenced on January XX, 2022 and concluded on May XX, 2022. On April XX, 2022, the Student made an online request to the professor for accommodations, consistent with the College's procedure. On May X, 2022, the Student e-mailed the professor requesting a copy of the PowerPoint slides and any lecture recordings. The professor responded on the same day and indicated that he did not "share [his] powerpoint slides" and that the complex figures he used already existed in the class reader. He also indicated that he did not separately record lectures, although students could make their own recordings. With respect to the lecture recordings, the College indicated that its policy on recording lectures was that the accommodation enabled a student to use their own recording device to capture the lecture portion of their class, but did not obligate a professor to make a recording.

According to the Student, she was most concerned with the access to classroom presentation materials. She stated that the class reader did not contain all of the slides shared by the professor during lecture. On the same day, May X, she made an appointment with the Disability Services & Program for Students (DSPS) office to discuss the e-mail exchange regarding access to class materials. According to the College, the DSPS counselor indicated that there was insufficient time to request the class materials from the Professor, with only two instructional days left in the term. DSPS indicated that she should have reached out sooner. DSPS offered her tutoring support in preparing for the final exam, which the Student confirmed she took advantage of. The Student took the final on May X, five days later, and earned a "X" in the class. At the time of the complaint filing, she was concerned that the grade was lower than what she anticipated receiving and that the grade would make it hard for her to apply to XXXXX school. However, when OCR spoke to her in March of 2023, she confirmed she was now in a XXXXX program. She was frustrated by this experience, but no longer requested an individual remedy.

### Analysis

The evidence shows that after the Student notified the DSPS office of her disability, the College engaged the Student in an interactive process to determine the accommodations she needed and outlined the process she was to follow to request accommodations in specific classes. The facts indicated that the Student followed this process. In April of 2022, she alerted the professor of her need for accommodations, and in May of 2022, she requested copies of class presentation materials. The professor denied this request after indicating that he never shares his PowerPoint slides because many or most of the slides were in the class reader, a point the Student disputes. The Student attempted to initiate an interactive process on the Professor's denial of the accommodation but DSPS indicated that the Student's request came too late in the term and only offered tutoring support.

On March XX, 2023, OCR conducted a meeting with the College, and indicated a concern with the professor's apparent unilateral decision not to provide an approved accommodation and the limited support provided the Student through the interactive process at the time she reported the denial, five days before the final exam. Even if the request for the accommodation came late in the term, DSPS could have engaged the professor in a discussion to narrow the request for relevant slides that the Student had identified had not been reproduced in the reader. OCR indicated that the College's inaction at the time the Student met with DSPS staff, and the professor's blanket denial of the accommodation in the first place (which was unrelated to when the request was

made), raises a concern about denial of academic adjustments/services under 34 C.F.R. § 104.44(a).

To address OCR's concerns, the College, without admitting to any violation of law, entered into the enclosed resolution agreement. Pursuant to the Agreement, the College agrees to develop a guidance memorandum for all professors and instructors at the College on how to implement the academic accommodation of "class presentation materials." The memorandum will describe what constitutes class materials, and provide guidance if professors or instructors receive the request late in a term or have concerns about intellectual property. The College also agreed to meet privately with the professor at issue in this complaint to discuss the guidance memo.

### Overall Conclusion

This concludes the investigation of this complaint.

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 Student concurrently. When fully implemented, the resolution agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the University is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Student 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact me at [ava.m.dealmeida-law@ed.gov](mailto:ava.m.dealmeida-law@ed.gov).

Sincerely,

/s/

Ava De Almeida Law  
Team Leader

Enclosure

Cc: Felicity A. Torres, Counsel