



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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January 7, 2020

Bart Patterson  
President  
Nevada State College  
1300 Nevada State Drive  
Henderson, Nevada 89002

Re: Nevada State College  
OCR Reference No. 10192123

Dear President Patterson:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Nevada State College (College). OCR investigated whether the College discriminated against Student A, on the basis of disability, by:

1. Subjecting Student A to disability-related harassment from the professor (Professor A) of XXXXXX during the spring 2019 academic term, resulting in the creation of a hostile environment; and
2. Failing to implement academic adjustments and auxiliary aids for which Student A was approved during the spring 2019 academic term in XXXXXX.

OCR conducted its investigation of the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II). These laws prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance and by public entities, respectively. The College is a recipient of federal financial assistance from the Department and is a public entity and must comply with these laws.

Prior to completion of OCR's investigation, the College expressed an interest in voluntarily resolving the complaint. OCR determined that allegation No. 1 was appropriate for a voluntary resolution, and the College signed the enclosed Voluntary Resolution Agreement (Agreement) addressing allegation No. 1. Regarding allegation No. 2, OCR completed its investigation. OCR determination is that the evidence does not

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

support a conclusion that the College failed to comply with Section 504 and Title II with regard to the issue investigated. OCR's findings of fact and conclusion set forth below are based upon information and documents provided by the Complainant and the College.

*Allegation No. 1*

The regulation implementing Section 504, at 34 C.F.R. § 104.4, prohibits excluding an individual from participation in, denying an individual the benefits of, or otherwise subjecting an individual to discrimination on the ground of disability under any program or activity that receives federal funds. A recipient's failure to respond promptly and effectively to disability harassment that is sufficiently serious that it creates a hostile environment is a form of discrimination prohibited by Section 504. Harassment creates a hostile environment when the conduct interferes with or limits a student's ability to participate in or benefit from the recipient's programs, activities, or services. The existence of a hostile environment, on the basis of disability, that is created, encouraged, accepted, tolerated or left uncorrected by a recipient constitutes different treatment on the basis of disability in violation of Section 504.

The regulation implementing Title II, at 28 C.F.R. § 35.130, prohibits excluding an individual from participation in or being denied the benefits of the services, programs, or activities of a public entity, or being subjected to discrimination by any public entity. Title II is interpreted consistently with Section 504.

With respect to allegation No. 1, OCR's investigation to date indicates that Professor A made comments to Student A over the course of Student A's enrollment in XXXXX during the spring 2019 academic term regarding Student A's status as an individual with a disability. Student A could have reasonably construed these comments as a negative perception of her disability, resulting in Student A feeling discriminated against with respect to her participation in Professor A's class.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before OCR issues its final determination, the recipient expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the College requested to resolve allegation No. 1 prior to the conclusion of OCR's investigation. In light of the College's willingness to address the concerns identified by OCR comprehensively without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate regarding allegation No. 1. Subsequent discussions with the College resulted in the College signing the enclosed Agreement. OCR will monitor the implementation of the Agreement and

will close the complaint when OCR determines that the terms of the Agreement have been satisfied.

*Allegation No. 2*

Findings of Fact

Student A is a qualified student with a disability that took XXXXX during the spring 2019 academic term. Evidence OCR reviewed establishes that Student A was granted, as relevant here, the following disability-related accommodations with respect to her enrollment in XXXXXXXX: extra time on exams, and a reduced-distraction testing environment.<sup>1</sup>

It is Student A's position that over the course of her enrollment in XXXXX, Professor A resisted her efforts to use the testing center at the College Disability Resource Center (DRC), a reduced-distraction environment, and that Professor A instead pressured Student A to take her exams in class with her peers. Student A told OCR that as a result of this pressure she did not use the DRC testing center for her last two exams in Professor A's class. Student A also told OCR that on her last exam in XXXXXXXXXX, which she took in class, she was not provided extra time.

It is the College's position that at all times during the spring 2019 academic term, the College provided Student A with access to the DRC testing center and extended time on exams, but that Student A did not avail herself of her accommodations for every exam she took in XXXXXXXXXX.

In an interview, the Director of the DRC (DRC Director) told OCR that Student A scheduled and took exams in the DRC testing center during the spring 2019 academic term four times, on February 11 and 19, March 11 (taking one of two exams scheduled) and March 15. The DRC Director told OCR that for each of the exams Student A took in the DRC testing center she was afforded extra time to complete the exam. The DRC Director told OCR that DRC records did not contain information about the conditions under which Student A took exams outside of the DRC testing center.

In an interview, Professor A told OCR that she was aware of Student A's accommodations calling for her to be provided extra time on exams and a quiet testing

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<sup>1</sup> In an interview, Student A told OCR that she was also told that Professor A should not be calling on her in XXXXXXXXXX. OCR was not able to find any evidence indicating that the College granted Student A an accommodation limiting how much she could be called on with respect to any class she took during the spring 2019 academic term.

environment. Professor A told OCR that, with respect to extra time on exams, she provided all students in her class, including Student A, as much time as needed on all her exams. With respect to Student A's use of the DRC testing center, Professor A denied pressuring Student A to take her exams in class but did indicate, after Student A did not do well on her first two tests, that she broached with Student A taking her exams in class, so that Professor A could offer her assistance as appropriate.

Records of communication between Student A and Professor A reflect that they engaged in discussions about where Student A could take her exams for XXXXXXXXXX. The records do not reflect that Professor A ever prohibited Student A from taking her exams in the DRC testing center as a condition of taking XXXXXXXXXX or that the professor ever told or implied to Student A that taking her exams in the DRC testing center would negatively impact her grade.

Student A did not provide any information to OCR indicating that when she sought to take exams in the DRC testing center that the DRC did not facilitate this or prohibited her from doing so, or that, with respect to any exam she took at the DRC testing center, she was not provided extra time.

#### Analysis and Conclusion

The issue OCR investigated is whether the College discriminated against Student A, on the basis of disability, by failing to implement academic adjustments and auxiliary aids—extra time on exams and a reduced-distraction testing environment—for which Student A was approved during the spring 2019 academic term in XXXXXXXXXX.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), provides that a recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

The Section 504 regulation, at 34 C.F.R. § 104.44(d), states that a recipient must take such steps as are necessary to ensure that no disabled student is discriminated against because of the absence of educational auxiliary aids.

The regulations implementing Title II, at 28 C.F.R. §§ 35.160(b)(1) and 35.130(b)(7), describe similar obligations for public entities to make modifications to their academic

requirements and ensure the provision of auxiliary aids. These regulations are interpreted consistently with Section 504.

The evidence establishes that the College approved disability-related accommodations for Student A with regard to her enrollment in XXXXXXXXXX, and that Student A used these accommodations several times during the spring 2019 academic term, by taking her XXXXXXXXXX exams in the DRC testing center, a reduced-distraction environment. The evidence also establishes that each time Student A took an exam in the DRC testing center, she was provided extended time to complete it.

Regarding the last two exams Student A took in the classroom for XXXXXXXXXX, OCR found insufficient evidence to establish that Professor A ever prohibited Student A from using her accommodations. Student A and Professor A provided conflicting testimony on this point. OCR did not locate evidence corroborating the statements of either.

Based on the foregoing, OCR is unable to conclude that the College discriminated against Student A, on the basis of disability, by failing to implement her approved academic adjustments of extra time on exams and a reduced-distraction testing environment in XXXXXXXXXX. Accordingly, OCR is unable to conclude that the College violated Section 504 or Title II with respect to allegation no. 2.

This letter sets forth OCR's determination in an individual OCR case and should not be interpreted to address the College's compliance with any other regulatory provisions or to address any issues other than those addressed in this letter. 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.

This concludes OCR's investigation of the complaint. The Complainant may have the right to file a private suit in federal court regardless of OCR's determination.

The Complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information is incomplete, inaccurate, the legal analysis is incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the Recipient. The Recipient has the option to submit to OCR a response to the appeal. The Recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the Recipient.

Please be advised that the College may not harass, coerce, intimidate, 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, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

I wish to thank you and your staff for the cooperation extended to OCR during the investigation of this complaint. If you have any questions regarding this letter, please contact David Kauffman, attorney, at (206) 607-1603 or via email at [david.kauffman@ed.gov](mailto:david.kauffman@ed.gov).

Sincerely,

Paul Goodwin  
Supervisory Attorney