



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 30, 2015

Dr. Stephen Scott
President
Wake Technical Community College
9101 Fayetteville Road
Raleigh, North Carolina 27603

Re: OCR Complaint No. 11-14-2285 and
OCR Complaint No. 11-14-2328
Resolution Letter

Dear Dr. Scott:

This letter is to notify you that the Office for Civil Rights (OCR) of the U.S. Department of Education (Department) has completed its investigation of the above-referenced complaints that were filed on June 16, 2014, and August 18, 2014, against Wake Technical Community College (the College), specifically, the XXXX (the Program) located in the XXXX (the Center). The complaints were filed by a parent (the Complainant) on behalf of her two daughters (Student A and Student B). The Complainant alleged that the College discriminated against Student A and Student B based on disability (multiple) during the 2013-2014 term. Both Student A and Student B are quadriplegic and have visual perception challenges. Additionally, Student A has XXXX.

The specific allegations that OCR investigated and the Complainant alleged in complaint number 11-14-2285 were:

Allegation 1: the College discriminated against Student A and Student B by failing to provide Student A and Student B with an individual scribe for note taking.

Allegation 2: the College discriminated against Student B by not allowing Student B to continue in its Program based solely on TABE test scores.

Allegation 3: the College discriminated against Student A and Student B by requiring that Student A and Student B take and pass the TABE test after 30 hours of instruction, while other non-disabled students in the Program take the test after 60 hours of instruction.

In OCR complaint number 11-14-2328, the Complainant alleged that the Program was inaccessible because the Center where the Program is located is physically inaccessible and there

is no accessible restroom within the Center. The Complainant also alleged that the College was retaliating because the Complainant filed OCR complaint number 11-14-2285. Specifically, the Complainant alleged the following:

Allegation 4: Student A's Program is inaccessible because there is no accessible entrance to the Center and no accessible restroom within the Center; and

Allegation 5: College staff members are retaliating against Student A because the Complainant filed a prior complaint with OCR by:

- (a) Threatening to penalize Student A if she is late to class due to the inaccessibility of the Center; and
- (b) Refusing to allow Student A to drink fluids while in class.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the College receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

In reaching a determination on the above allegations, OCR reviewed documentation submitted by the College and the Complainant. OCR also conducted interviews of College staff and the Complainant. During its investigation, OCR identified compliance concerns with regard to Allegations 1 through 4, but found insufficient evidence to substantiate Allegation 5. An explanation of OCR's findings is set forth below.

Allegation 1:

The Complainant alleged that the College discriminated against Student A and Student B by failing to provide them with an individual scribe.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance from the Department. The Section 504 implementing regulation also requires, at 34 C.F.R. § 104.44(d)(1)&(2), that recipients take such steps as are necessary to ensure that qualified individuals with disabilities are not denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the program or activity operated by the recipient because of the absence of educational auxiliary aids and services. Recipients need not, however, provide individually prescribed devices or other

devices or services of a personal nature. Also, a recipient need not provide an academic adjustment, if to do so would constitute a fundamental alteration of the recipient's program or activity, or constitute an undue burden.

The Title II implementing regulation, at 28 C.F.R. § 35.160(b)(1)&(2), provides that a public entity shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of any service, program, or activity conducted by a public entity.

When determining whether a recipient provided academic adjustments in accordance with Section 504 and Title II, OCR examines the following: (1) whether the individual is a qualified individual with a disability; (2) whether the Complainant provided adequate notice in accordance with required procedures of the need for academic adjustments; (3) whether necessary academic adjustments were provided; and (4) whether the academic adjustments provided were of adequate quality and effectiveness.

The Complainant stated that the DSS approved both Students to receive an individual scribe but only provided one scribe for both Students to share. The Complainant stated that she expressed at the time that she did not think that one scribe would be adequate to meet the needs of the Students and was told by DSS staff that, if one scribe was not effective, another scribe would be hired. OCR was provided copies of e-mails showing that the Complainant raised this concern with the College on June 6, 2013, April 6, 2014, April 10, 2014 and May 2014.

The Complainant stated that, after she raised this concern with the College, two volunteers were obtained, who assisted the Students until December 2013; however, when the Students returned to classes in January 2014, the DSS could not find volunteers to serve as scribes for the Students. Therefore, between January and June 2014, when the first complaint was filed with OCR, there was only one scribe, who split his time between Student A and Student B. The Complainant alleged that, when the scribe worked with one of the Students, the other Student would be doing nothing. The Complainant also stated that, around February 2014, she started going into the classroom with Student A and Student B to act as a second scribe, but that she was told that she could not scribe for them.

The issue raised by the Complainant's allegations is whether the University discriminated against Student A and Student B based on disability by failing to provide them necessary and effective academic adjustments to enable Student A and Student B to participate in its Program.

The evidence showed that DSS approved Student A and Student B to receive certain academic adjustments. By doing so, the DSS determined that Student A and Student B are both qualified individuals with a disability. The College acknowledged during interviews that both Students were approved to receive an individual scribe and this did not occur. The College also stated that the Students were also approved to receive *adaptive equipment/services* and *assistive technology* (AT) (specifically Kurzweil software), which was installed on three classroom computers to provide the same services that a scribe would provide. The College stated that the scribe shared notes with both Students and was available to write in-class responses for Student B, while Student A read on the computer and vice-versa, although Student A reportedly was sometimes

able to use the computer to enter her own responses. The College's position was that the AT essentially replicated the services of a second scribe. The College also stated that all classroom materials were formatted for the Students to access with AT, and that a DSS AT Specialist worked with the Students, instructors and the scribe to ensure that everyone understood how to use the AT.

OCR's review of the accommodations plans developed by the DSS for Students A and B showed that, while the plans of both Students included the provision of adaptive equipment/services and other forms of AT, this academic adjustment is listed separately on the Plans from the provision of a scribe. As written, the plans must reasonably be interpreted to indicate that AT was to be provided as a separate accommodation and not as a substitute for a second scribe. This conclusion was corroborated by the Students' former scribe, who informed OCR during an interview that it was not his understanding that AT was intended to be provided as a substitute for a scribe, but as an additional accommodation. The former scribe also stated that neither Student A nor Student B could use the Kurzweil software without his assistance or the assistance of others.

Even assuming that AT was intended to be provided as a substitute for a second scribe, it could not reasonably be concluded that the AT that was provided was effective. Specifically, the Complainant informed OCR that, immediately after the Kurzweil software was installed, she informed the College that the Students could not use the software partly due to its having multiple windows and toolbars and being brightly colored, and therefore bothersome to the Students' eyes. We note that information provided by the College indicates that the Software highlighting was not adjusted until July 2014. Also, in reviewing the notes of the AT Specialist, which were provided by the College, OCR observed that the Students experienced several challenges with the Kurzweil 3000 software that was installed for the Students' use. Between May 28, 2013 and June 2013, there were several issues with the software, including that both the Students and the classroom instructor experienced problems logging onto the CPUs with the AT installed on them. Additionally, according to the AT Specialist's notes, at least for a period time, there was no printer that could read the Software.

On the basis of the investigative information provided, OCR finds that the College failed to provide the Students with an individual scribe, and that, even if AT was provided as a substitute for a scribe, it was not effective, in violation of Section 504 and its implementing regulation, at 34 C.F.R. §§ 104.44(a)&(b), and 104.44, as well as Title II and its implementing regulation, at 28 C.F.R. § 35.160(b)(1)&(2).

Allegation 2

The Complainant alleged that the College discriminated against Student B based on disability by dismissing Student B from the Program based on TABE scores that did not reflect Student B's learning. OCR had to determine whether the College discriminated against Student B based on disability by dismissing Student B from the Program based on TABE scores that did not reflect Student B's learning.

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from federal financial assistance from the Department. Thus, the Complainant’s allegation raises the issue of whether the College discriminated against Student B based on disability by dismissing Student B from its Program.

The Complainant alleged that the College discriminated against Student B by dismissing Student B from the Program at the end of the spring term based on TABE scores that do not reflect the Student’s learning. The Complainant informed OCR that, initially, she was told that Student B's TABE scores were fine and then later was told that Student B would not be allowed to continue in the Program because her scores were too low. The Complainant stated that she advocated for Student B and was successful in getting Student B retested (verbally) in June 2014, whereupon Student B's TABE score increased by 60 points. The Complainant stated that it was not until Student B attempted to enroll for the summer 2014 term that she was informed that Student B did not have enough class hours to re-test on the TABE.

In response to the allegation, the College stated that Student B was dismissed from the Program because she did not meet the *ability to benefit* requirement when she last took the TABE test on May 5, 2014, at which time her reading (scaled) score was 473 and the grade equivalent was fourth grade. The College also stated that, because Student B did not accumulate the required 60 hours of instruction, she was not allowed to retest on the TABE and was dismissed from the Program. The College stated that no documentation of a medical reason for the absences was provided. The College stated that Student B did not have sufficient hours to retest on the TABE because of absences and tardies. The TABE scores of both Students are reflected in the charts below.

	Hrs of Instruction	Test Date	Reading Test	Reading Score	Grade Equivalent
Student A	Initial test	2/28/2013	9E	430	3.0
	90.25 hrs	6/24/2013	10E	474	4.5
	247.5 hrs	4/24/2014	9E	455	3.8
	69.4 hrs	6/30/2014	9M	517	5.9

	Hrs of Instruction	Test Date	Reading Test	Reading Score	Grade Equivalent
Student B	Initial test	2/28/2013	9E	460	3.9
	90.25 hrs	6/24/2013	10E	487	5.0
	270 hrs	5/5/2014	9M	473	4.4

The College stated that Student B was dismissed from the Program because her last TABE score did not reflect that she was benefitting from the Program and she did not have the required 60 hours to retest on the TABE. However, while asked, no information was provided to indicate that a student must attain a certain score or grade equivalent to continue in the Program, or that any non-disabled student has been dismissed from the Program for failure to attain a certain

TABE score. Additionally, OCR requested a list of students without disabilities that were dismissed from the Program for failure to meet the *ability to benefit* requirement, but the College was unable to provide this information. Therefore, OCR was unable to determine if any student without a disability was dismissed from the Program for failure to demonstrate ability to benefit.

The evidence showed that Student B's most recent TABE score was only slightly lower than the TABE score that she attained, when she was given the test on June 24, 2013, and exceeded her initial TABE score by 13 points. We note that, during an interview with the Instructional Program Specialist, OCR was informed that neither Student's TABE scores reflect progress. The College stated that no student has been allowed to retest, who did not have at least 60 hours of instruction. Again, the College has provided no documentation to support this assertion. The evidence showed that the College allowed Student A to retest on the TABE (although Student A's prior TABE score reportedly also did not reflect *ability to benefit*) and that Student A's score increased by +60 points. If given the opportunity to retake the TABE, Student B might meet the *ability to benefit* requirement to continue in the Program.

After consideration of all available evidence, it reasonably must be concluded that the challenges that Student B was forced to contend with may have contributed to Student B's not having attained the 60 hours required to retest on the TABE, and resulted in Student B's most recent TABE score not accurately reflecting Student B's learning, as alleged. Therefore, OCR finds that, as alleged, the College discriminated against Student B based on disability by dismissing Student B from the Program.

Allegation 3

The College discriminated against Student A and Student B by requiring that Student A and Student B take and pass the TABE test after 30 hours of instruction, while other non-disabled students in the Program take the TABE after 60 hours of instruction. OCR had to determine whether the College treated Student A and Student B differently based on disability by requiring that the Students take and pass the TABE after 30 hours of instruction, while other non-disabled students in the Program take the TABE after 60 hours of instruction. Because the College's failure to provide necessary and effective academic adjustments to enable Student A and Student B to effectively participate in the College's Program led to the Students not receiving the full 60 hours of instruction

Section 504 and its implementing regulation provide, at 34 C.F.R. §§ 104.4(a), that no person may, on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from financial assistance from the Department. The Section 504 implementing regulation further provides that, in providing any aid, benefit or service to students, a recipient may not treat a student differently based on disability with regard to such aid, benefit or service. The requirement of the Title II implementing regulation is interpreted similarly to that of Section 504.

For an allegation such as this, in determining whether the College violated Section 504 and/or Title II, OCR must first determine whether the College treated Student A and Student B differently based on disability than similarly-situated students without disabilities. If OCR finds

evidence of difference in treatment, then the recipient is given the opportunity to provide a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR examines this reason to determine if it is an excuse (or pretext) for unlawful discrimination.

The Complainant informed OCR that all participants in the Program are required to demonstrate the *ability to benefit* from the Program; that is, that the student is progressing. To determine whether a student is progressing in the Program, students are tested periodically (after at least 60 hours of instruction) on the TABE. The TABE measures a student's reading level and provides a grade equivalent. If a student's TABE score does not show that the student is making progress, the student is dismissed from the Program. As noted above, the Complainant alleged that by only providing one scribe to assist both Student A and Student B, the one scribe had to split his time between both Students and that, when the scribe worked with one of the students, the other student would sit doing nothing. The Complainant alleged that, as a result, and while both Student A and Student B may have been in class, neither student actually received the 60 hours of instruction that Student A and Student B should have received 60 hours prior to being required to retest on the TABE--that is, that they each received only about 30 hours of instruction instead of 60 hours.

The Complainant also stated that the Students' class met four times a week (Monday to Thursday) from 5:30pm to 7:30pm, but that, every Monday, the scribe arrived about one-half hour late. The Complainant estimated that the Students missed between one to 1.15 hours of class time every week due to the scribe's late arrival. The Complainant also stated that the scribe signed the Students into class and that they could not be counted as being in class until the scribe arrived. During an interview with the scribe, he acknowledged that he routinely arrived late on Mondays and that there were other days when he arrived late because he was taking care of a terminally ill mother. However, he also stated that, when he would arrive late, the Students' teacher would sign them into class. OCR requested copies of the instructors attendance sheets as well as a printout from the database that was used to track students' attendance. However, this information was not been provided. Without this kind of documentation, OCR could not reasonably determine whether (and how many times) Student B may have been marked as absent or tardy due to the scribe's absence or late arrival, or due to other challenges that Student B faced, like not being able to enter the AEC facility and not having access to an accessible restroom (discussed below).

In response to the allegation, the College stated that Student A and Student B were held to the same standard as non-disabled students in the Program. Specifically, the College stated that all students are required to demonstrate *ability to benefit* and that it is their policy that, if a student does not demonstrate progress within one year of attendance, the student is dropped from the Program and referred to other college programs, or another agency. The College stated that the adoption of this policy¹ was encouraged by the North Carolina Community College System office and reflects the performance measures outlined in the Workforce Investment Act of 1988.

¹ The full policy can be found on the College's website page under the heading "College & Career Readiness Admission and Placement Policy.

The College also stated that, with one narrow exception², no student is permitted to take the TABE unless the student has received at least 60 hours of instruction. OCR requested via e-mail dated December 16, 2014, comparator information; however, the College was unable to provide it.

A College may hold a student with a disability to the same standard applied to non-disabled students, as long as the standard is reasonable and does not discriminate on the basis of disability. The requirement that all Program participants take the TABE after 60 hours of instruction to demonstrate *ability to benefit* is not an unreasonable requirement. Therefore, the standard may be applied to Student A and Student B, to the same extent that it is applied to other non-disabled students. However, the question raised is whether both Student A and Student B received 60 hours of instruction before being required to take the TABE test. The evidence showed that both Student A and Student B were approved to receive an individual scribe to enable them to effectively participate in the Program, but that only one scribe was provided, who had to split his time between both Students. The evidence also showed that the one scribe that was provided routinely arrived late. While OCR cannot determine with certainty how the scribe's late arrival may have adversely affected the ability of the Students to meet the 60-hour requirement to test on the TABE, it reasonably must be concluded that the failure to provide both Student A and Student B with an individual scribe could result in the Students not receiving the requisite 60 hours of instruction that other, non-disabled students received, especially in light of the fact that the scribe admitted being routinely late in arriving. It reasonably may be concluded that the failure to provide both Student A and Student B with the academic adjustments they were approved to receive, coupled with the scribe's late arrival, could have resulted in Student A and Student B not obtaining 60 hours of classroom instruction that students without disabilities received, prior to taking the TABE, and constituted different treatment of the Students based on disability.

Based on the above, OCR finds that the College discriminated against Student A and Student B by requiring that they take the TABE before the Students had actually received 60 hours of instruction, due to the College's failure to provide the Students approved academic adjustments, and also due to other challenges that the Students were required to face (no accessible entrance to the facility, etc.). This constitutes a violation of Section 504 and its implementing regulation, at 34 C.F.R. §§ 104.44(a) & (b), as well as Title II and its implementing regulation, at 28 C.F.R. § 35.160(b)(1) & (2).

Allegation 4:

The Complainant also alleged that Student A's Program is inaccessible because there is no accessible entrance to the Center and no accessible restroom within the Center. OCR had to determine whether the College discriminated against Students A and Student B by failing to

² The one exception is where a student at the Adult Secondary Education level attains a TABE score of between 567 and 595, and has permission from the instructor to not take the TABE.

ensure that its Program was accessible to the Students and other persons with mobility challenges.

Section 504 and its implementing regulation, at 34 C.F.R. §104.21, provides that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies. The regulation further provides that, at §104.22(a), that a recipient shall operate its program or activity so that when each part is viewed in its entirety, it is readily accessible to individuals with disabilities. However, a recipient need not make every part of its facility accessible to and usable by individuals with disabilities. A recipient may comply with the regulatory requirement to make its program or activity accessible through such means as redesign of equipment, reassignment of classes, or other services to accessible buildings, assignment of aides to beneficiaries, alteration of existing facilities, and construction of new facilities in conformance with the requirements of §104.34.

The regulation implementing Title II also provides, at 28 C.F.R. § 35.149, that, except as otherwise provided in §35.150, no QID shall, because a public entities facilities are inaccessible to or useable by individuals with disabilities, be excluded from participation in, be denied the benefits or the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. It further states, at 28 C.F.R. § 35.150(a), that a public entity shall operate each service, program or activity so that the service, program or activity, when viewed in its entirety, is readily accessible to and useable by individuals with disabilities.

The Complainant alleged that the Program in which Students A and Student B participated was not accessible to them because there was no accessible entrance to the AEC. Specifically, the Complainant alleged that neither Student A nor Student B could enter the AEC facility until the scribe arrived, or someone else assisted them in entering the facility. She also alleged that the Students were counted as being late arriving to class because they could not be marked as being in attendance until the scribe arrived, although this information was not corroborated by the Students' scribe.

Additionally, the Complainant alleged that the women's restroom within the AEC was not accessible because the Students could not enter the restroom without assistance, there was no automatic door opener, and there was insufficient turn space within the stall to negotiate a wheelchair. The Complainant stated that, because there was no accessible restroom, both Student A and Student B routinely arrived to school about fifteen minutes late because she would have them use the restroom at home immediately prior to transporting them to class. The Complainant stated that, on those occasions when one of the Students needed to use the restroom while at school, she had to come to the facility and transport the Student about fifteen miles, so that the Student could use an accessible restroom.

The Complainant's allegations raised the issue of whether the College discriminated against Student A and Student B by failing to ensure that its Program is accessible.

As to the accessibility of the Students' Program, the College acknowledged that the entrance to the AEC facility did *not* have an automatic door opener, and that there is no other accessible entrance. As to the women's restroom stall, the College stated that the Complainant first raised this concern about the restroom stall with the North Carolina Department of Public Instruction (NCDPI) in June 2014. After the NCDPI brought the matter to the attention of the College, its facilities personnel reviewed the AEC restroom facilities. The College stated that the women's restroom met 1991 ADAAG accessibility standards, with regard to the width of the stall. However, the College acknowledges that there are a few issues with the stall (i.e., only one grab bar and the one grab bar is only 36 inches in length (rather than 42 inches); the toilet paper and paper towel dispensers are mounted at the wrong height; and the lavatory countertop is mounted two inches higher than the guidelines require.

The investigative evidence showed that the AEC facility did not meet applicable accessibility standards. Thus, the College failed to ensure that Student A and Student B had access to their Program of study. Section 504 and its implementing regulation require that recipients of federal assistance from the Department ensure that students with physical disabilities are not denied access to their program of study. Additionally, Title II and its implementing regulation require that public colleges and universities ensure that their facilities are physically accessible to and useable by individuals with disabilities. The investigative evidence corroborated the Complainant's allegation that there was no accessible entrance to the AEC facility and no accessible women's restroom (that meets applicable ADA standards) within the facility.

Some information was obtained during interviews to show that the College put some measures in place (after Student B's dismissal from the Program) to ensure that Student A had access to the College's program. Specifically, the newly-hired scribe was tasked to wait at the door for a minimum of 15 minutes after the start of class to ensure that Student A could enter the building. OCR notes that the College reasonably should have been aware of the physical accessibility challenges that Student A and Student B would have to attend with even before Student A and Student B entered the Program. The College could have chosen to relocate the Program to an accessible facility, or it could have researched other options for providing access to the Program to the Students (like streaming to an accessible facility) but chose not to do so. OCR notes that requiring that a student with a disability wait at the door until someone arrives to assist a student with entering the building does not constitute access that is comparable to that of students without disabilities.

Based on the investigative evidence, OCR finds that, as alleged, the College discriminated against both Student A and Student B by failing to ensure that the Students' Program was physically accessible and also by failing to ensure that the AEC facility, including the restroom, was accessibility, in violation of Section 504 and its implementing regulation, at 34 C.F.R. §§ 104.4, and 104.21-23, as well as Title II and its implementing regulation, at 28 C.F.R. §§ 35.149 and 35.150(a).

Allegation 5:

The Complainant's final allegation is that College staff members retaliated against Student A because the Complainant filed a prior complaint with OCR by: (a) threatening to penalize Student A if she is late to class due to the inaccessibility of the Center; and (b) refusing to allow Student A to drink fluids while in class. OCR investigated this matter thoroughly but was unable to substantiate the allegation.

The statutes and regulations enforced by OCR prohibit retaliating against a student because a complaint has been filed with OCR. When analyzing a claim of retaliation, OCR will look at the following three elements to determine if the Complainant has stated an initial case: 1) whether the Complainant engaged in a protected activity (e.g., filed a complaint or asserted a right under a law enforced by OCR); 2) whether the College took a materially adverse action against the Complainant; and 3) whether there is some evidence that the College took the adverse action as a result of the Complainant's protected activity. If all these elements are present, this establishes an initial or prima facie case of retaliation.

As to the Complainant's retaliation claims, OCR was informed during interviews with College personnel, including persons who participated in the August 18th meeting, that Student A was informed after the complaint was filed that she could not drink fluids during class. However, the College informed OCR that it is the College's policy that no student, including students without disabilities, be allowed to drink fluids during class. OCR also was informed that the College made an exception to this policy to allow Student A to drink water during class, and that the Student was informed of this policy at the meeting on August 18th. The College provided OCR documentation showing that, to address Student A's needs, the College made an exception to its policy to allow Student A to have water while in the classroom. We note that neither Student A nor the Complainant has provided information to indicate that this matter has been a concern since the College made this exception to its policy.

With regard to the College's threatening to penalize Student A if she arrived late to class, the College stated that Student A was enrolled in a course called Expanded Reading and Vocabulary, which has a classroom attendance policy (the Attendance Policy). OCR was provided a copy of the Attendance Policy, which states that a student may not be absent more than seven times and that, if a student arrives to class more than fifteen minutes late, the student is counted as absent for that class session. The College stated that the Policy has been in place for a long time and that, due to absences and late arrivals, the College made a decision to enforce the already existing Policy. OCR was informed that all students were informed of the Policy, including students without disabilities.

OCR also was informed that, as an accommodation for Student A's mobility challenges, and her difficulties getting to class, the College put steps in place to allow Student A to arrive to class 15 minutes after the start of the class as an accommodation for Student A's disabling condition. OCR notes that no information has been provided to indicate that Student A was penalized in any manner for arriving late to class.

Filing a complaint with OCR constitutes a protected activity. Thus, the first element of the retaliation standard was met with the Complainant's filing of OCR Complaint number 11-14-2285. The investigative evidence also showed that, after the complaint was filed, Student A was told that she could not drink fluids during class and also was told that she would be penalized if she arrived late to class. However, the evidence also showed that the no-drinking during class policy applied to all students, not just Student A. The evidence also showed that the College made an exception to its no-drinking policy to allow the Student to have water during class once an exception to the policy was requested. As to the alleged threat to penalize Student A for arriving late to class, the evidence does not support that such a threat was made towards the Student. Instead, the facts reveal that the recipient provided Student A with an attendance policy on August 18, 2014, that was distributed to all students the day before. The policy was provided during a meeting to discuss classroom accommodations. During this meeting, the attendance policy was discussed and Student A signed the policy indicating receipt. An email was later sent to Student A on August 22, 2014, summarizing this meeting. The evidence, in this case, does not support that Student A was threatened with a penalty for tardiness. Thus, the evidence did not show that Student A experienced a material adverse action that would deter a reasonable person from engaging in a protected activity. Because all elements of a retaliation claim must be met, and the evidence showed that Student A did not experience a material adverse action, OCR cannot find that the College unlawfully retaliated against the Student as alleged.

On June 17, 2015, the College signed a Resolution Agreement to remedy the violations outlined above. A copy of that Resolution Agreement is enclosed here. OCR will monitor the College's implementation of the Agreement.

This concludes OCR's investigation of these complaints. This letter should not be interpreted to address the recipient type's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

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 retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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

OCR would like to express its appreciation to XXXX for her assistance and professionalism throughout the investigation of the complaints. If you have any questions, feel free to contact Judy Briggs, Senior Investigator, at judy.briggs@ed.gov or (202) 453-5902.

Sincerely,

/S/

Alessandro Terenzoni
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure