



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

October 4, 2019

Dr. Franklin D. Gilliam, Jr.
Chancellor
The University of North Carolina at Greensboro
P.O. Box 26170
Greensboro, NC 27402-6170

Re: OCR Complaint No. 11-16-2227
Letter of Findings

Dear Dr. Gilliam:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on June 1, 2016 against the University of North Carolina at Greensboro (the University). The Complainant alleged that the University discriminated and retaliated against her on the basis of race (African American) and disability. Specifically, the complaint alleged that:

1. The University failed to respond promptly and effectively to complaints of disability-based and race-based harassment made by the Complainant against (a) her XXXX professor and (b) her XXXX professor during the spring 2016 semester.
2. The University retaliated against the Complainant when her XXXX professor discussed the Complainant's academic adjustments with the entire class after the Complainant reported this professor's disability-based and race-based harassment to the University administration.
3. The University failed to provide required academic adjustments to the Complainant in her XXXX course during the three XXXX practical exams held in the spring semester.

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. OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in any program or activity receiving 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 University receives Federal

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

financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504, Title II, and Title VI.

During the investigation, OCR reviewed documents provided by the Complainant and University; interviewed the Complainant and University faculty and staff; and, examined information posted on University websites.

Before OCR completed its investigation, the University expressed a willingness to resolve Allegation 2 pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the University expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement.

OCR completed its investigation of Allegations 1 and 3. After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II regarding Allegation 1(a), which the University agreed to resolve through the enclosed resolution agreement. OCR found insufficient evidence of a violation of Title VI regarding Allegation 1(a). OCR also found insufficient evidence of a violation of Section 504 and Title II regarding Allegations 1(b) and 3.

OCR's findings and conclusions regarding Allegations 1 and 3 are discussed below, as well as a summary of the evidence obtained by OCR to date regarding Allegation 2.

Background

The Complainant is a student with a disability registered with the University's Office for Accessibility Resources (OARS). She alleges that during the spring 2016 semester her XXXX professor harassed her on the basis of her disability and her race (African American). She further alleged that the XXXX professor retaliated against her after she reported the professor's actions. The Complainant does not believe the University responded effectively to address her complaint of discrimination and retaliation. Finally, the Complainant alleged that she encountered disability-based harassment in her XXXX during the spring 2016 semester, and that she was denied approved academic accommodations in this course.

Allegation 1: The University failed to respond promptly and effectively to complaints of disability-based and race-based harassment made by the Complainant against (a) her XXXX professor and (b) her XXXX professor during the spring 2016 semester.

Legal Standard

Section 504 and Title II prohibit discrimination on the basis of disability. Disability-based harassment that creates a hostile environment is a form of disability discrimination. Universities are required to provide a prompt and equitable grievance process to address complaints of disability discrimination. Title VI prohibits discrimination on the basis of race. Racial harassment that creates a hostile environment is a form of race discrimination. A university's failure to address racial harassment that creates a hostile environment can violate Title VI.

In order to review a University's response to a complaint of disability-based harassment, OCR must also review the University's Section 504 grievance procedures. The Section 504 regulation, at 34

C.F.R. § 104.7(b), requires universities that employ 15 or more people to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints of Section 504 violations. The Title II regulation, at 28 C.F.R. § 35.107(b), requires public universities that employ 50 or more people to adopt and publish grievance procedures providing for the prompt and equitable resolution of complaints of Title II violations.

OCR examines a number of factors in evaluating whether a university's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedures to students, parents and employees, including where to file complaints; application of the procedures to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; written notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

Facts and Analysis

Allegation 1(a): XXXX Course

The Complainant's concerns about the XXXX Professor began in early February 2016 when the Professor stated to the entire class that the course required students to think critically and that the only people unable to do so were people with mental and physical disabilities. Then, after class on February 24, 2016, the Complainant handed the XXXX Professor a letter from OARS outlining the Complainant's approved accommodations, information that the Complainant considered to be confidential. At this time, the Complainant also tried to explain how she felt after the earlier remarks the XXXX Professor had made towards people with disabilities and their incapacity to think critically. The Professor then told the Complainant that OARS had been "very intrusive over the years" and that the office was "using black students like you to get to me." Upset by these remarks, the Complainant informed the Professor that she was going to report her. The Professor responded: "If this goes to Jesus Christ, I would be there. I'm not afraid."

As indicated, the Complainant immediately reported the Professor's statements to OARS by phone and in writing that same day. On Friday, February 26, 2016, the Complainant spoke with the Director of OARS, who apologized for the situation and informed the Complainant that he had sent a letter to the XXXX Department. The following Monday, February 29th, the Director of OARS reached out to the Complainant and stated: "I want to assure you that OARS takes your concerns, your confidentiality, and your rights seriously and I will be meeting Tuesday at 10 to help address this for you and make sure you get the privacy and respect you are entitled to." The Director also invited the Complainant to meet with him to further discuss the situation if she wished to do so.

The Complainant alleges that on this same day the XXXX Professor discussed the Complainant's disability accommodations with the entire class. When this occurred, the Complainant made another report to OARS. The Complainant also wrote a statement that another student signed confirming having witnessed the incident. Again, on March 2, 2016, the XXXX Professor allegedly discussed the Complainant's accommodations with the entire class.

On March 8, 2016, the Dean of the XXXX Department wrote to the Complainant asking to arrange a meeting to discuss the ongoing situation and to ensure that proper steps were being taken to provide the Complainant with her approved accommodations. The Complainant then met with the Dean on March 15, 2016, after which the Dean sent her the following email:

Based on our conversation, I will expect a formal grievance from you in the coming days. In the meantime, I ask for your permission to share some details of our conversation--particularly the conversations between you and [the XXXX Professor] that occurred in front of the class--so that I can intervene with [the XXXX Professor] and clarify with her that this cannot happen.

The next day, March 16th, the Complainant submitted a formal grievance to the Dean. In this letter, the Complainant described the incidents in her XXXX class on February 24th, February 29th, and March 2nd. The Complainant also stated that she was seeking compensation for disability discrimination and racial discrimination, as well as for violating her confidentiality willfully and intentionally on more than one occasion. Finally, the Complainant requested a full refund of loans/grants for the semester, withdrawal from the XXXX Professor's class without penalty, and for the XXXX Professor's tenure to be revoked.

By March 30th, the Dean had concluded his investigation and issued a report of his findings to the Complainant. Specifically, the University granted the Complainant's request to withdraw from the XXXX course without penalty and adjusted her Spring 2016 financial aid package accordingly. The Dean informed the Complainant that she could appeal these findings and recommendations by contacting the Dean of the College of Arts and Sciences. The Complainant did not take this additional step.

Response pursuant to Section 504 and Title II

OCR reviewed the University's investigation into the Complainant's disability discrimination complaints, including the "Written Response of Findings on Grievance Filed By [Complainant]," and identified several issues:

a. Notice of the Procedures

Although the University publishes a non-discrimination statement, the University does not publish information on the applicable grievance procedures governing complaints under Section 504 and Title to students, parents, or employees, and in particular does not provide clear direction about where to file complaints and how these complaints will be processed.

First, the University's general "Grievance Procedures for Students" state that "grievances related to sexual misconduct and sexual harassment, undue favoritism, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act, or the Rehabilitation Act of 1973 must be handled through the separately designated University policy." OCR could not locate any such separate policy for handling complaints made by students pursuant to Title II or Section 504. The University confirmed that no such separate policy or practice exists. Rather, the University applies the general "Grievance Procedures for Students" to complaints of disability-based discrimination. This is in direct contradiction to the language of that very policy.

Second, the University does not provide clear and consistent information about where to file complaints of disability-based discrimination against faculty members or staff. In addition to the above-described misdirection, the University's Office of Accessibility Resources (OARS), which oversees disability services, directs students to the formal and informal procedures for resolving grievances on the student conduct website under "Policies for Students." These policies are limited to alleged misconduct by University students. There is no further information instructing how students should proceed if alleging discriminatory conduct by faculty rather than by peers.

The University publishes its "Policy on Discriminatory Conduct" on the Division of Student Affairs' website. This policy directs students who feel they have been treated unfairly based on their race or disability to contact the Division of Student Affairs. Likewise, under "Complaints regarding discrimination" in the Student Grievance and Appeals Policies and Procedures section of the University's websites, the University directs individuals to the same "Policy on Discriminatory Conduct" that leads students to the Division of Student Affairs without further information on the procedure or process of filing a discrimination complaint. Of note, however, is another statement included on the University's Student Grievance and Appeals Policies and Procedures webpage after the list of types of grievances, ranging from grade appeals to financial aid disputes and including "Complaints regarding discrimination." The University stipulates that students should follow the general "Grievance Procedures for Students" for complaints that do not fall into the above categories. Based on this statement, it does not appear that the "Grievance Procedures for Students" are intended to apply to complaints of discrimination. Rather, discrimination complaints should be brought to the attention of the Division of Student Affairs directly.

The Division of Student Affairs oversees several different University departments, including OARS and the Dean of Students Office. There is no specific information on the Division of Affairs website as to which department handles discrimination complaints. The Dean of Students Office webpage hosts a "Harassment Complaint Form" for use solely if filing a harassment complaint against a current University student. The complaint form asks for background and narrative information about the alleged harassing behaviors and provides general criteria for harassing conduct that creates a hostile environment. There is no further information instructing how students should proceed if alleging discriminatory conduct by faculty rather than by peers.

The Dean of Students Office confirmed to OCR that it does not handle complaints of discrimination by faculty members or staff. According to the Dean of Students, when a student claims that a professor has discriminated against or harassed her based on disability, or another protected status, the Provost Office handles the matter rather than the Dean of Student's Office.

The University does not provide notice to students instructing that discrimination complaints against University faculty are handled under the direction of the Provost Office. Moreover, the University does not provide clear information on the applicable grievance procedures governing complaints against faculty members under Section 504 and Title II. In the course of our investigation, OCR noted confusion among University administrators about the roles of the Dean of Students Office, OARS, the Provost Office, and the academic departments in resolving discrimination complaints against faculty members. OCR has been unable to ascertain the University's procedure for handling disability-based discrimination complaints against University employees. OCR has not located a policy, form, or direction on such matters on the University website, and the University did not provide this information to OCR.

Prompt, Adequate, Reliable, and Impartial Investigation of Complaints

The University applied its general “Grievance Procedures for Students” when investigating the Complainant’s allegations. These procedures are used to resolve allegations by students that they have been treated with substantial unfairness by another student or by faculty, staff, or student of the University.

Evidence indicated that the academic dean charged with the initial investigation had not received training to investigate or hear grievances based on alleged discrimination. The academic dean was not well-versed in the investigative requirements or standards by which to resolve whether a student had experienced discrimination. The Dean indicated to OCR that his investigation aimed to “discover the truth of the allegation” and if the complaint was valid, to “seek resolution by discussion, counseling, mediation, or agreement of the parties, or by administrative action.” When asked about the protocols or practices in place at the University for conducting such investigations, the Dean explained that he takes a “common sense approach,” guided only by the general instructions as written in the grievance procedures. The Dean did not make findings with respect to all of the allegations raised by the Complainant and did not appear to understand or apply the correct legal standard where findings were made. In the final report, the Dean writes:

After careful and deliberate review, outlined more fully below, I am honoring your request to withdraw without academic or financial penalty from [the XXXX course] this semester, and the University should complete this process by this week, with no further action required by you. Due to this withdrawal, you will not suffer any adverse consequences from [the XXXX Professor’s] conduct. Therefore, I do not need to consider whether, as you alleged in your complaint, [the XXXX Professor’s] statements constitute discrimination.

The Dean expressed to OCR that he didn’t feel he had standing to make a legal determination regarding whether the XXXX Professor’s actions amounted to discrimination. The Dean confirmed to OCR that he did not believe a finding regarding the alleged disability-based discrimination was necessary because he determined that the Complainant suffered no adverse action given the remedy of withdrawing from the course without penalty. The University also shared its position that a finding as to whether disability discrimination had occurred was unnecessary because the University had found instead that the Complainant’s privacy rights had been violated due to a breach of confidentiality, had granted the Complainant at least some of the relief she had requested, and did not believe she suffered any further harm as a result.

When evaluating whether grievance procedures provide for prompt and equitable resolution of a disability discrimination complaint, OCR looks at whether the procedures contain reasonably prompt timeframes for the major stages of the complaint process. The University’s “Grievance Procedures for Students,” which has been identified as the governing procedure for disability discrimination complaints against faculty, does not provide any specific timeframes for the conclusion of the required informal review. Students must “initially attempt to resolve the matter by the end of the academic semester (fall, spring, or summer) following the academic semester when the alleged incident occurred....by communicating in writing allegations to the administrative officer most directly concerned, excluding the person accused of the improper act.” The procedures require the identified administrative officer, or designee, to “immediately” investigate the complaint, and “at the end of efforts to resolve the grievance” record a written statement of the

findings. “In the case of an allegation against a faculty member, if the student wishes to appeal the decision of the Department Head/Chair, the Dean shall be the first avenue of appeal. The final step in the informal review for all students shall be the Vice Chancellor to whom the respondent ultimately reports.” The University provides no timeframe for conclusion of any of these phases of the informal review. With respect to the Complainant, the University initiated and completed its review in a prompt manner, however the University’s absence of established standards for processing time is a concern.

The University also does not provide students with any specific procedures for the handling of harassment complaints submitted through the electronic form on the website for the Dean of Students Office. OCR could not locate the procedures applied by the University to complaints of discrimination, including disability-based harassment, made by students. The University states only: “The University will review all harassment complaints to the extent of the information available. Failure to provide specific information or complete the form in its entirety may limit the ability to review the incident to the fullest extent possible and/or implement appropriate remedies.” As such, the University does not appear to provide reasonably prompt timeframes for its Section 504 grievance procedures when being implemented by the Dean of Students Office, the department of the Division of Student Affairs that handles these matters. According to the Dean of Students, the University responds to discrimination complaints against students by gathering information, completing an investigation and then reporting the outcome to the complainant. The specific steps taken by the University in addressing disability discrimination complaints are not published.

For the reasons above, OCR determined that the University’s grievance procedures do not fully incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability as required by the Section 504 implementing regulation at 34 C.F.R. §104.7(b). OCR found that the University provided an appropriate individual remedy with respect to the Complainant’s grievance despite the procedural issues articulated above. The enclosed resolution agreement, once fully executed, will resolve the identified compliance concerns for the handling of future disability discrimination complaints.

Response pursuant to Title VI

OCR found that the University did not complete an investigation into the racial harassment allegation specifically. However, OCR also determined that there was no actual race harassment based on the conduct alleged and the facts determined through investigation. Even assuming the Professor made the statement in question (which it seems the University agrees took place), that statement alone appears to be the only alleged or identified indicator of racial harassment. This statement alone, is not sufficient to make out a violation of Title VI and therefore the University had no obligation to respond. As such, OCR determined there was insufficient evidence to support Allegation 1(a) with respect to Title VI.

However, as a matter of technical assistance, the University’s handling of racial discrimination complaints could, under different circumstances, result in noncompliance with Title VI and OCR encourages the University to take steps to ensure that staff charged with handling Title VI complaints pursuant to the University’s policies are equipped to do so.¹

¹ OCR has previously addressed the University’s response to race discrimination complaints in Case No. 11-14-2299. The Resolution Agreement reached with the University in that matter remains in monitoring at this time.

Allegation 1(b): XXXX Course

According to the Complainant, on February 24, 2016 the XXXX Instructor told the Complainant at the end of class that this was her first time dealing with students with disabilities when presented with the Complainant's accommodations letter; a small group of other students were close enough to overhear this remark at the time. Upset by the incident, the Complainant later sent an email to the XXXX Instructor asking the Instructor to be more consideration in the future. The XXXX Instructor responded to the Complainant, in relevant part: "[Y]ou're absolutely right. I realized it after you left and I greatly apologize for that. I was going to apologize to you in person the next time I saw you. I am so sorry for that."

The Complainant confirmed to OCR that this was the only such incident, but that the Complainant felt the XXXX Instructor's actions amounted to harassment despite her apology. However, this remark was made during a conversation discussing the Complainant's accommodation letter which the Complainant herself initiated after class despite the presence of other students nearby. Given this context, OCR has determined that this incident, on its own, does not create a hostile environment based on disability.

The Complainant further explained to OCR that the XXXX Instructor refused to work with her and closely followed the Complainant around during XXXX examinations. The XXXX Instructor denied following or targeting the Complainant during the administration of XXXX examinations. According to the XXXX Instructor, she monitors these examinations by standing in the back of the classroom to ensure that no one is cheating and that everyone is making progress XXXX. From this vantage point, the XXXX Instructor could see the approximately 20 students in the XXXX section. Although the XXXX Instructor does move throughout the examination, she tried not to walk around too much so as not to distract the students. As further discussed in Part III, OCR did not find evidence suggesting that the XXXX Instructor refused to work with the Complainant with respect to the implementation of academic accommodations. The Complainant also acknowledged to OCR that she never submitted a complaint or grievance to the University regarding the conduct of her XXXX Instructor. As such, OCR finds there is insufficient evidence to support the Complainant's assertion that the XXXX Instructor's actions created or contributed to a hostile environment based on disability.

Allegation 2: The Complainant alleges that the XXXX Professor shared information about the Complainant's academic adjustments with the entire class on February 29th and March 2nd in retaliation for the Complainant's report to University administration regarding the Professor's disability-based and race-based harassment.

Legal Standard

The Title VI regulation, at 34 C.F.R. § 100.7(e), prohibits retaliation against any individual who asserts rights or privileges under Title VI or who files a complaint, testifies, assists, or participates in a proceeding under Title VI. The Section 504 regulation, at 34 C.F.R. § 104.61, which incorporates the procedural provisions of the regulation implementing Title VI of the Civil Rights Act of 1964, prohibits retaliation against any individual who asserts rights or privileges under Section 504 or who files a complaint, testifies, assists, or participates in a proceeding under Section 504. The Title II regulation, at 28 C.F.R. § 35.134, contains a similar prohibition against retaliation.

Facts and Analysis

The Complainant herself informed the Professor of her intent to report alleged harassment; moreover, the Director of OARS confirmed to OCR that he had made repeated outreach to the Professor by phone and by email in the days following the initial report to attempt to resolve the issue. However, the Director also stated that his attempts were unsuccessful; he never connected with the Professor and he could not confirm that the Professor received notice of the Complainant's report to OARS. OCR has concerns that the Professor may have openly discussed the Complainant's disability-related accommodations with the class in an attempt to curtail the Complainant's protected activities.

OCR found that the University took disciplinary action against the XXXX Professor for her conduct toward the Complainant (and other students), and specifically XXXX. To further address OCR's concerns about possible retaliatory behaviors by a University faculty member, the University signed the enclosed agreement to resolve Allegation 2 of the complaint pursuant to Section 302 of OCR's *Case Processing Manual*.

Allegation 3:

The Complainant alleges that the University failed to provide required academic adjustments in her XXXX course during the three XXXX practical exams held in the spring 2016 semester.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. OCR interprets the Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to

make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 and Title II in making decisions regarding a student's eligibility for academic adjustments. Both Section 504 and Title II envision a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

Facts and Analysis

The Spring 2016 XXXX consisted of three XXXX examinations held on February XXXX, March XXXX, and April XXXX. Each test contained a combination of practical and non-practical portions. The non-practical portion involved traditional examination questions that could be completed while the students were seated in classroom rows. For the XXXX practical portion, XXXXX.

The Complainant did not request any accommodations² until the end of February 2016, right before the second XXXX practical examination. At that time, the Complainant provided the XXXX Instructor with a copy of her Spring 2016 OARS Accommodations Letter. The Accommodation Letter is written broadly for all University faculty rather than specific to a course. The Letter informs University faculty of the reasonable accommodations approved by OARS for the Complainant due to a disability based on a thorough review of current documentation. According to this Letter, OARS approved "taped lectures" and "access to instructor's notes/power points prior to class" as classroom accommodations as well as "extended time (1.5x)" and "reduced distraction setting" as testing accommodations for the Complainant. The Letter, signed by both the Complainant and the Assistant Director of OARS on February 22, 2016, instructs that "[t]he implementation of academic accommodations is a shared responsibility between the student, professor, and OARS." The Letter anticipates that the receiving University faculty member will discuss each requested accommodation and how it will be implemented so that it is appropriate to both the student's needs and the format of the particular course.

Both the Complainant and the XXXX Instructor, as well as supporting documentation, confirm that they discussed the implementation of the Complainant's approved accommodations in the XXXX section on February 24, 2016.

The Complainant contends that the XXXX Instructor refused to provide her with extended time or a quiet environment when administering XXXX practical examinations. According to the Complainant, the XXXX Instructor stated that additional time could not be provided given the

² The University and the Complainant frequently refer to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable modifications." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

XXXX facility schedule. As such, Complainant was given the same time as all other students within which to complete each XXXX practical.³ Finally, the Complainant had to take the XXXX practical examinations at the same time and in the same environment as her classmates without an accommodation to minimize distractions.

The XXXX Instructor maintains that she reviewed each of the approved accommodations with the Complainant to confirm the scope of accommodations to be implemented in XXXX. According to the XXXX Instructor, the Complainant only asked for advance notes and powerpoint slides as an accommodation as well as recordings of the presentations for the XXXX. The XXXX Instructor informed the Complainant that there were no formal recordings of the XXXX presentations, but that the Complainant could record the presentations using her own device. The XXXX Instructor also explained to the Complainant that powerpoint presentations followed in XXXX were created by the XXXX Course Professor; the XXXX Instructor did not have specific notes aside from these powerpoint slides. The XXXX Instructor informed the Complainant that she could provide the powerpoint slides before the XXXX, if available, and if not, then right afterward; the Complainant expressed agreement with this plan. The XXXXX Instructor insists that the Complainant stated that she did not need extended time for the XXXXX practical examinations, which are designed to take only an hour, since students were provided the full two-hour course block within which to complete the exams. The XXXXX Instructor also maintains that the Complainant stated she did not require a reduced distraction environment for the XXXXX practical examinations. As such, the Complainant did not receive any accommodations during the XXXX practical examinations.

The XXXXX Course Professor recalled to OCR meeting with the XXXX Instructor as soon as the Complainant requested accommodations to discuss how to proceed. In particular, the XXXX Instructor wanted to get permission to release the powerpoint slides, which were created by the Professor. According to the Professor, the XXXX Instructor seemed especially concerned about “getting things right” with respect to the Complainant’s request as that was the first semester the XXXX Instructor taught at the University. The Professor informed the XXXX Instructor that she could release the powerpoint slides to the Complainant as long as the Complainant did not share these slides with other students. However, the Professor did not specifically recall a discussion about any other accommodations and assumed therefore that the Complainant had requested only the powerpoint slides. The Professor expressed her belief that the XXXX Instructor would have sought out her opinion if asked to provide a different testing environment as this would have been challenging given the physical space and schedule of the XXXX. The Professor recalled only one other communication with the XXXXX Instructor regarding the Complainant’s accommodations: sometime toward the end of the semester, the XXXX Instructor expressed concern that the

³ In addition to the three XXXX practicals, the Complainant contends that the course included additional “pop quizzes,” during which the Complainant was not provided with testing accommodations. OCR determined that the Complainant characterized extra credit assignments as “pop quizzes.” Students would have the opportunity during XXXX to earn extra credit points that could be applied to their XXXX practical examinations. For each of the first two XXXX practical examinations, students had an opportunity to earn up to four extra credit points; students had the opportunity to earn eight extra credit points toward the third and final XXXX practical examination. On four separate XXXX days, the XXXX Instructor would ask the students to turn in a page of their XXXX manuals or hand out a quiz with a question about the XXXX; each such opportunity was worth one point. There was no penalty for students who did not participate or who did not provide the correct answers. Student performance on extra credit opportunities did not factor into the student’s participation grade in the course, or in any other way other than to boost the examination score. The XXXX Instructor would hint in advance about when these opportunities would take place, and their periodic occurrence was built into the course.

Complainant had declined additional powerpoint slides, an extra tool that might help improve her poor course performance. The Professor confirmed that, to her knowledge, the Complainant did not request additional time or a separate limited distraction setting for the XXXX examinations. Furthermore, the Complainant never raised any concerns with the Professor about the implementation of her accommodations in the XXXX course, XXXX.

The Complainant performed poorly on each of the three XXXX examinations. The XXXX Instructor described the Complainant as combative regarding how she was graded, often insisting that she deserved partial credit for answers according to the distributed grading rubrics and answer keys. For example, XXXX. In such grade disputes, the Complainant never complained about the time provided within which to complete the examination. According to the XXXX Instructor, the Complainant always turned her test in before the two hours allotted. When Complainant finished the March XXXX practical examination, five or six other students were still working; seven or eight students were still working when she completed the April examination. The Complainant acknowledged to OCR that she did not use the entire time available to students on any of the three XXXX practical exams; however, the Complainant believes she would have benefited from receiving time-and-a-half for the exams.

After a thorough review of the evidence, OCR is unable to determine, by a preponderance of the evidence, that the Complainant was denied testing accommodations in the XXXX section. According to the XXXX Instructor, the Complaint did not raise concerns about the provided accommodations at any point during the semester; the XXXX Instructor therefore assumed that the accommodations as agreed upon and implemented were sufficient. The Complainant confirmed that she did not raise the alleged lack of accommodations in the XXXX with anyone other than the XXXX Instructor, and that she did not discuss these accommodations with the XXXX Instructor after the initial conversation in February 2016. The Complainant had regular contact throughout the semester with OARS but did not raise any concerns about her XXXX practicals, even after receiving a failing grades on the first and second exams and prior to the final and third opportunity. During this same time period, however, the Complainant did reach out to OARS to facilitate testing accommodations on the XXXX final examination. In early April 2016, a week before the final examination (scheduled for April XXXX, 2016), the XXXX Course Professor received an email from OARS indicating that the Complainant had requested a quiet space and additional time for the final examination. The Complainant had also requested to take the examination the day after the rest of the class, however the Professor did not agree to this accommodation. Instead, OARS and the Professor worked out a way for the Complainant to take the final examination at the OARS testing center earlier on the same day scheduled for the class. The XXXX Instructor, the Director of OARS, and the Complainant all confirm that the Complainant did not take similar steps with respect to the XXXX practical examinations.

Both Section 504 and Title II anticipate an interactive process in the determination and implementation of required academic accommodations; the Complainant's Spring 2016 OARS Letter echoes this requirement by explicitly noting the shared responsibility of students and faculty in this respect. At the post-secondary level, if an academic adjustment or auxiliary aid or service is not working or if the student is not receiving approved modifications, it is the student's responsibility to let the college or university know as soon as possible, and the parties should then work together to resolve the problem. Although the Complainant was entitled to extended time and a quiet environment for tests if needed, OCR was unable to corroborate the Complainant's verbal assertion that she sought these accommodations in the course. Consequently, OCR finds

insufficient evidence to support the Complainant's allegation that the College failed to provide her with the academic adjustments to which she was entitled in the XXXX during the spring 2016 semester.

Conclusion

On October 2, 2019, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of noncompliance regarding Allegation 1(a). In addition, when fully implemented, the Agreement will address Allegation 2. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant when the University enters into and fulfills the terms of a resolution agreement. OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct visits and may request information as necessary to determine whether the University has fulfilled the terms of the Agreement. If the University fails to implement the Agreement, OCR may initiate proceedings to enforce the specific terms and obligations of the Agreement. Before initiating such proceedings, OCR will give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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. 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.

The Complainant has a right to appeal OCR's determination regarding Allegations 1(a) (with respect to the Title VI finding), 1(b), and 3 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form⁴ or a written statement of no more than ten (10) pages (double-spaced, if typed) by mail to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202; by email to OCR@ed.gov; or by fax to 202-453-6012. The filing date of an appeal is the date that the appeal is submitted online, postmarked, submitted by email, or submitted by fax. In the appeal, the Complainant must explain why he or she believes the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome; failure to do so may result in dismissal of the appeal. OCR will forward a copy of the appeal to the University. The University has the option to submit a response to the appeal to OCR within 14 calendar days of the date that OCR forwarded a copy of the appeal to the University.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an 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 retaliation complaint with OCR.

⁴ The online appeal form is located at: <https://wdcrocolp01.ed.gov/CFAPPS/OCR/ocrAppealsForm.cfm>

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 seek 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.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-453-6978 or megan.rok@ed.gov.

Sincerely,

Michael Hing
Team Leader, Team I
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXX, Deputy General Counsel for the University, XXXX