



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

November 5, 2021

Via Email to sralls@waketech.edu

Dr. Scott Ralls
President
Wake Technical Community College
9101 Fayetteville Road
Raleigh, NC 27603

Re: OCR Complaint No. 11-17-2201
Resolution Letter

Dear Dr. Ralls:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education received on XXXXX against Wake Technical Community College, which we will refer to as the College. While we strive to resolve the complaints we receive in a timely manner, we acknowledge the length of time OCR has taken to resolve this case, and we thank the College for its patience.

The Complainant alleged that the College discriminated against the Student on the basis of disability. Specifically, the complaint alleged that:

1. The College refused to engage in the interactive process with the Student, or the Complainant XXXXX, regarding the Student's disability-related needs in XXXXX;
2. The College discriminated against the Student on the basis of disability by not providing effective or adequate notice of the disciplinary process; and
3. The College excluded the Student from the XXXXX program based on a manifestation of her disability during the XXXXX academic year.

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. 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. Because the College receives federal financial assistance from the Department of Education and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation, OCR reviewed documents provided by the Complainant and the College, interviewed the Complainant and College faculty/staff, and listened to audio recordings of the Student's grievance hearing.

After carefully considering all of the information obtained during the investigation to date, OCR found insufficient evidence to support allegations 2 and 3. Before OCR completed its investigation of allegation 1, the College expressed a willingness to resolve it 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 school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In addition, the College expressed a willingness to resolve pursuant to Section 302 of OCR's *Case Processing Manual* other concerns about the College's disability grievance procedures and responses to the Complainant's grievances that OCR identified during the investigation.

A summary of the evidence obtained by OCR to date and OCR's analyses are discussed below.

Factual Background

The Student's Enrollment

The Student enrolled in the College's XXXXX program in XXXXX, after the Complainant learned about the program when its representatives presented at a high school parent meeting.¹ The program is XXXXX and focuses on XXXXX career preparation. The College's general student registration form has a question about disability status, with "Learning disability" and "Other disability" as the two possible selections.

The Student was XXXXX at the time of her enrollment in the program and was taking classes to earn a XXXXX certificate. The Complainant is XXXXX and also has XXXXX the Student.² In XXXXX, in order to enroll in the program, the Student went to the College with the Complainant for an interview and a test with an instructor/coordinator in the program. The Student and the Complainant also completed the College's registration form upon enrollment and checked off "Other disability" under the question about disability status. In addition, the Student's information sheet for the XXXXX program lists the Complainant as XXXXX and has "Yes" checked off after XXXXX. During the enrollment process, the College obtained a copy of XXXXX.

College Policies

The College's disciplinary process provides for several levels of disciplinary actions that may be imposed for violations of the Student Code of Conduct. The Assistant Vice President of Student Services, the Senior Vice President for Enrollment and Student Services, the Student Conduct Officer, or the Registrar may impose and modify disciplinary actions, according to the College's catalogue.³ The disciplinary process begins with an initial meeting between a Student Conduct Officer and a referred student in order to determine whether disciplinary sanctions should be

¹ This program is now called XXXXX.

² XXXXX.

³ <https://www.waketech.edu/catalog/student-code-conduct-rights-and-responsibilities>

initiated; during that meeting the Student Conduct Officer explains the disciplinary process and apprises the student of the allegations and their rights and responsibilities. The College makes efforts to resolve the matter by “mutual agreement.” If formal disciplinary charges are initiated, the student will be notified of the sanction by school email or U.S. mail and given 15 days to grieve the sanction.

A student who wants to grieve a sanction may request a hearing with the College’s Disciplinary Review and Grievance Committee (DRGC) using an online form. The College’s grievance form does not mention disability accommodations, but its Student Code of Conduct website states that when filing a grievance “the student will need to inform the Student Conduct Officer at this time if reasonable accommodations are needed.” The DRGC has the authority to confirm or modify the sanction and uses the preponderance of the evidence standard. DRGC hearings consist of the student’s statement, witness testimony, and questions from the committee. Students are provided notice of the hearing by email at least five days in advance. Students have the right to have an advisor present at the hearing, as long as they notify the Student Conduct Officer three days before the date of the hearing, but the advisor cannot ask questions of anyone at the hearing. Students also have the right to engage legal counsel for advising purposes only any time during this process, with three days advance notice.

Students requesting disability accommodations⁴ during their time at the College must self-identify to Disability Support Services (DSS) by submitting current documentation of their disability to determine their eligibility for services. Students must have a disability as defined by Section 504 and the Americans with Disabilities Act (ADA). The current DSS website has instructions and links for how current and prospective students can request accommodations and submit documentation.⁵

The 2020-2021 College Catalog includes a statement that the College does not discriminate on the basis of disability in the admissions or employment processes or in access to programs, facilities, or activities. The College’s “Disability Discrimination and Accommodation Policy” appears on its website in the middle of its *Title IX Policy (Sexual Discrimination, Harassment, and Misconduct)* and states that “Grievances related to disability status and/or accommodations will be addressed using the procedures below.” The policy also names the person identified as the ADA Coordinator/504 Officer responsible for overseeing efforts to comply with disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability, as well as coordinating services for students with disabilities and determining which accommodations are appropriate for the student’s particular needs and academic program(s). In addition, the Student Code of Conduct contains an “Other Complaints” section stating that “Concerns involving harassment or discrimination by a college faculty member or staff member on the basis of race, color, religion, sex, sexual orientation, age, national origin, disability, or veteran status should be directed to the college’s affirmative action officer and or Title IX

⁴ The College 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).

⁵ There is general information available about DSS at <https://www.waketech.edu/student-services/disability-support-services/current-dss-students>.

officer.” The policy does not indicate, more specifically, the process for filing a complaint alleging disability discrimination.

Incidents and Discipline

During the Student’s time in the XXXXX program, she was involved in several incidents that resulted in her being disciplined and found in violation of the College’s Student Code of Conduct. The first incident occurred on XXXXX, and after the Student met with a Student Conduct Officer, who we will refer to as Student Conduct Officer A, the College placed the Student on disciplinary probation from XXXXX through XXXXX. A letter dated XXXXX from the College to the Student included the decision and the Student’s ability to appeal it.

The second incident occurred on XXXXX, and after the Student met again with Student Conduct Officer A, the College issued the Student a disciplinary written reprimand and put a no contact order in place for her and the other student involved in the incident. The College’s response to OCR and records indicate that a letter was hand-delivered to the Student notifying her of this information, and that the letter was mailed on XXXXX to the Student’s address and was received on XXXXX. According to the College, on XXXXX, the Complainant spoke with another Student Conduct Officer, who we will refer to as Student Conduct Officer B, and the Associate Vice President for Student Services about the XXXXX incident.

The third incident was reported on XXXXX, and, after Student Conduct Officer B met with the Student, the College issued a mutual no contact order and suspended the Student for the remainder of the semester. The College mailed a notification letter to the Student on XXXXX, which she received on XXXXX.

Complainant Grievances

The Complainant spoke with Student Conduct Officer A on XXXXX, the Associate Vice President for Student Services on XXXXX, and Student Conduct Officer B on XXXXX. She filled out an official grievance form on XXXXX. The Complainant alleged that the College was discriminating against the Student on the basis of disability by not attempting to informally resolve the incidents, which the Complainant alleged would be both an accommodation for the Student’s asserted disability and in compliance with the Student Code of Conduct. The Complainant also requested that she be notified of any discussions with College administrators, asserting that she, as the Student’s XXXXX, had not received written notice of the incidents.

The Complainant filled out a second grievance form with the College, also on XXXXX, regarding the incident reported as taking place on XXXXX and the discipline imposed on XXXXX. The Complainant alleged that the College discriminated against the Student on the basis of disability by imposing such a harsh sanction for the second incident. The Complainant alleged that because of the Student’s disabilities, she had a hard time with XXXXX, and the administrator should have tried to help her instead of effectively prohibiting her from finishing the program with XXXXX. She alleged that the facts of the incident were not accurate. She also claimed that when she spoke with Student Conduct Officer B on XXXXX, he never mentioned the suspension, and she only found out when the Student showed her the letter she got in the mail on XXXXX. The

Complainant also requested, as the Student's XXXXX, that she be notified of and allowed to be present at any meetings with College administrators.

On XXXXX, the Complainant emailed the Associate Vice President for Student Services to inform him that she was filing a formal objection to and a complaint about the Student's suspension. The Complainant again alleged that the College discriminated against the Student based on her disabilities, in violation of Section 504 and the ADA, because one of the primary characteristics of the Student's disability is XXXXX and the College had failed to consider the Student's disability when disciplining her.

In a memorandum prepared for OCR, the XXXXX Director stated that she received a call from the Director of the College's Disability Support Services (the DSS Director) a few days before the Student's scheduled XXXXX discipline grievance hearing before the DRGC, instructing her to call the Complainant, who had called the DSS Director upset over the actions taken against the Student, including her suspension without proper notice. The XXXXX Director stated that she could not speak with the Complainant about the specifics of the Student's case because she did not have a signed release and could not verify with whom she was speaking. In an interview with OCR, the Complainant asserted that at some point she was told that DSS did not XXXXX.

In an email exchange on XXXXX, Student Conduct Officer A told the Complainant that, while the Student could have legal counsel to advise her, the Complainant could not attend the hearing. The College told OCR that the Complainant was directed to obtain a form from the College's website that would allow her to attend the hearing if the Student approved, and she ultimately did attend the hearing.

The College's DRGC held a hearing on both of the Complainant's grievances on XXXXX. At the hearing, DRGC administrators said that in determining sanctions for student conduct incidents, they take into account the student's entire disciplinary history and cannot give the same sanction twice. For example, if a student receives a warning for a first offense, the student cannot receive a warning for a second offense. In discussing the XXXXX incident, the DRGC reviewed the details of the XXXXX incident and questioned the Student about it. The Student and the Complainant asserted at the hearing that they did not receive notice of the Student's sanctions for the XXXXX incident, namely the probation. The Student mentioned her disabilities during the hearing, but the DRGC members did not discuss any relationship between the Student's disabilities and her actions, nor did they ask her any questions about her disabilities.

The DRGC affirmed both original disciplinary decisions. The College mailed letters to the Student dated XXXXX notifying her of the DRGC's action to uphold the original sanctions. The Student did not return to or finish the program.

Legal Standards

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 college or 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 college or 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 colleges and universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Schools 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 school. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the school 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 the school's program. However, the school is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the school's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the school should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a school has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. The school and the student should engage in an interactive process to determine appropriate modifications. If a school 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 school's objections.

The Section 504 regulation, at 34 C.F.R. § 104.7(b), requires colleges 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 colleges 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 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.

Insufficient Evidence Determinations

Allegation 2: The College discriminated against the Student on the basis of disability by not providing effective or adequate notice of the disciplinary process.

During the XXXXX discipline grievance hearing, the Complainant and the Student raised the issue that they did not receive notice in XXXXX that the Student was on probation (which led to the Student getting a harsher punishment for subsequent infractions). The Complainant alleged that the Student was never handed the letter and never received it in the mail; however, the College's records show that the letter dated XXXXX was mailed to the Student informing the Student that she was on disciplinary probation until XXXXX. Additionally, the College's notes provided to OCR state that in a phone call on XXXXX, the Complainant expressed knowledge of the prior incident (presumably the XXXXX incident) involving the Student, because she had met with the Campus Police Officer about it. The letter was addressed to the Student's address on file, which was XXXXX, not the address of the Complainant. The College also provided OCR with copies of all the other letters that were sent to the Student's address on file, with certified mail receipts as well as a note stating that the letter regarding the XXXXX incident was delivered to the Student in person.

OCR found insufficient evidence to support the allegation that the College discriminated against the Student on the basis of her disability by providing ineffective or inadequate notice of the disciplinary process in XXXXX. Section 504 and Title II do not require the College to provide the Complainant with this notice, and the Student had not requested any disability-related accommodations with regard to the disciplinary process at that point. Therefore, OCR is closing this allegation as of the date of this letter and will take no further action on it.

Allegation 3: The College excluded the Student from the XXXXX program based on a manifestation of her disability during the XXXXX academic year.

OCR found insufficient evidence to support the allegation that the College excluded the Student from the XXXXX program based on a manifestation of her disability during the XXXXX academic year. Section 504 and Title II do not prohibit colleges and universities from applying the same conduct standards to all students, regardless of disability status. In addition, Section 504 and Title II do not prohibit colleges and universities from disciplining students for misconduct that is a manifestation of a disability, so long as the college or university disciplines students without a disability in the same manner.

The College suspended the Student for repeatedly violating its Student Code of Conduct. The College followed its established disciplinary process for each of the Student's infractions. The Complainant did not allege, nor did OCR find evidence, that the College treated the Student less favorably than students without disabilities in its application of its discipline process. Therefore, OCR is closing this allegation as of the date of this letter and will take no further action on it.

Potential Concerns Identified Prior to OCR Making a Determination

Allegation 1: The College refused to engage in the interactive process with the Student, or the Complainant XXXXX, regarding the Student's disability-related needs in XXXXX.

The Complainant told the Associate Vice President for Student Services, in an email on XXXXX, that the Student has XXXXX, and provided him with written information about what it is like to have these disabilities. The Associate Vice President for Student Services forwarded the Complainant's email to Student Conduct Officer A and requested that she let the Complainant know if the DRGC had everything they needed from the Complainant. In response to an email from Student Conduct Officer A, dated XXXXX, letting the Complainant know that her appeal had

been received, the Complainant informed Student Conduct Officer A that she planned to attend the hearing with the Student. The email string details the conversation back and forth between the Complainant and Student Conduct Officer A. Student Conduct Officer A responded that only the members of the hearing committee and those associated with the case could attend but that the Student could have legal counsel with her at the hearings if she wished. The Complainant reminded Student Conduct Officer A that the Complainant is XXXXX. In response, Student Conduct Officer A provided the Complainant with general information about the hearing process, which included the statement that “the student will need to inform the Student Conduct Officer at this time [when the hearing is requested] if reasonable accommodations are needed.” At the beginning of the hearing, the Complainant was told that she would not be able to speak to the hearing committee, and that if she wanted to speak with the Student, they would have to do it outside the room. From audio recordings, OCR was able to determine that the Complainant attended the hearings and was able to speak to the Student during the hearing briefly in hushed voices, but was not allowed to interact directly with the panel. The Student appeared to struggle throughout to XXXXX, and the Complainant was not permitted to speak on the Student’s behalf or to clarify the Student’s responses.

Based on its review of the evidence to date, OCR is concerned that the College did not recognize the Complainant’s request, to attend the hearing, because she is XXXXX, as a request for disability accommodation, and as such, did not engage in the interactive process regarding the request. However, as noted above, the College expressed a willingness to resolve this allegation by agreement pursuant to Section 302 of OCR’s *Case Processing Manual* before OCR completed its investigation, as detailed below.

Additional Concerns Noted during the Investigation to Date

The Complainant filed XXXXX internal complaints alleging that the College discriminated against the Student based on disability in its treatment of the Student during the discipline process. On XXXXX, the Complainant filed XXXXX complaints as appeals of the disciplinary sanctions assigned to the Student on XXXXX and XXXXX. The Complainant sent her XXXXX complaint to the Associate Vice President for Student Services via an email dated XXXXX.

While the College processed the XXXXX appeals of the discipline sanctions per the College’s discipline policy, the College did not discuss or make a determination regarding the Complainant’s disability discrimination allegations during the appeal hearings, and OCR is concerned that the College did not appear to process any of the Complainant’s disability discrimination allegations pursuant to the disability discrimination grievance procedures in place at the time.

Moreover, in the course of this investigation, OCR assessed the College’s disability discrimination grievance procedures currently in place for compliance with the Section 504 and Title II regulatory requirements. Based on its review of the evidence to date, OCR has concerns that the College’s disability grievance procedures are not in compliance with the Section 504 and Title II requirements that such procedures provide for the prompt and equitable resolution of disability discrimination complaints. OCR discussed these issues with the College, and, as stated above, the College expressed a willingness to resolve the issues by agreement pursuant to Section 302 of OCR’s *Case Processing Manual* before OCR completed its investigation, as detailed below.

Resolution and Conclusion

On November 4, 2021, the College signed the enclosed Resolution Agreement which, when fully implemented, will address allegation 1, as well as the additional issues identified by OCR. The provisions of the agreement are aligned with the allegation and additional issues and the information obtained during OCR's investigation to date and are consistent with applicable law and regulation. The agreement requires the College to: revise and republish its disability services materials to clarify that students may be entitled to non-academic accommodations under Section 504 and Title II; train staff and administrators involved in student enrollment, registration, and discipline on Section 504 and Title II protections for students with disabilities; and review and revise its disability grievance procedures to comport with Section 504 and Title II standards for the prompt and equitable resolution of complaints, publish those procedures, and train the appropriate staff on those procedures. Please review the enclosed agreement for further details. OCR will monitor the College's implementation of the agreement until the College has fulfilled the terms of the agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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. OCR would like to make you aware that individuals who file complaints with OCR 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 determinations regarding allegations 2 and 3 within 60 calendar days of the date of this letter. The Complainant must submit an online appeal form (<https://ocrcas.ed.gov/content/ocr-electronic-appeals-form>) or a written statement of no more than 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 202-245-8392. 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 she or he believes the factual information described here was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied, and how the correction of any error(s) would change the outcome. Failure to provide this information may result in denial of the appeal. OCR will forward a copy of the appeal to the College. The College 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 College.

Please be advised that the College 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.

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 College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Sharon Goott Nissim, the OCR attorney assigned to this complaint, at 202-245-7261 or sharon.nissim@ed.gov.

Sincerely,

Dan Greenspahn
Team Leader, Team 1
Office for Civil Rights
District of Columbia Office

Enclosure

cc: XXXXX