



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

August 12, 2022

By email only to PresidentsOffice@nvcc.edu

Anne M. Kress, Ph.D.
President
Northern Virginia Community College
Brault Building
Annandale, VA 22003-3723

Re: Case No. 11-22-2096
Northern Virginia Community College

Dear President Kress:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against Northern Virginia Community College – Woodbridge Campus. The Complainant alleged that the College discriminated on the basis of disability during the XXXX semester and with respect to XXXX (the Course), when the Course instructor (the Instructor) stated to the Complainant that the accommodation of extended time would constitute “special treatment” and was a courtesy, and then failed to provide the Complainant with extended time for the final examination in the Course on XXXX.¹

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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), 42 U.S.C. §§ 12131 *et seq.*, 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. The College receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

¹ The Complainant and the College 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).

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During its investigation to date, OCR reviewed information provided by the Complainant and the College. OCR also attempted to interview the Instructor, who is no longer contracted by the College as an employee; however, OCR was unable to arrange an interview.

Before OCR completed its investigation, the College expressed interest in resolving the allegations 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. The following is a summary of the evidence obtained by OCR during the investigation to date.

Evidence Obtained to Date

The Complainant was a student enrolled in the Course at the College in the XXXX semester. The Course was taught online. The Complainant informed OCR that XXXX, and she provided documentation indicating that the College's Accommodations and Accessibility Services Office approved her to receive academic accommodations, which was memorialized in a Memorandum of Accommodations (the MOA), dated XXXX. The accommodations included extended time (time and a half) on in-class assignments, quizzes, tests, and examinations. The Complainant provided OCR with information indicating that she sent a copy of the MOA to the Instructor on or about XXXX, prior to the first day of class for the Course.

In an email to College staff dated XXXX, the Complainant reported that at the end of class on the first day of the Course, she remained online to talk to the Instructor to ensure that she would receive the approved accommodations of extended time, as required by the MOA. The Complainant reported that she informed the Instructor that she XXXX, and when she raised the issue of her accommodations, the Instructor informed her that quizzes were not timed. However, the Complainant reminded the Instructor that the Course's final examination was timed. According to the Complainant, in response, the Instructor told her that she had previously worked at an elementary and secondary educational institution, had worked with XXXX individuals before, was familiar with accommodations, and that the provision of an accommodation of extended time on examinations was a courtesy and was not required. The Complainant also asserted to OCR that the Instructor told her that the provision of extended time would constitute "special treatment."

The Complainant also asserted to OCR that when the Course's final examination was administered on XXXX, instead of providing the Complainant with extended time, the Instructor modified the Course's final examination time to provide additional time for all students, such that all students received the same amount of time. Specifically, the Complainant informed OCR that the time allotted for the Course's final examination was originally XXXX minutes, but that all students received XXXX minutes on the final examination. The Complainant informed OCR that she ultimately received XXXX in the Course.²

During the investigation, the College confirmed to OCR that the Instructor provided the same amount of time on the Course's final examination for all students in the Course, which indicated

² The Complainant did not allege any other concerns about the Instructor's failure to implement the MOA that were still outstanding as of the time that OCR initiated the investigation.

that the Instructor may not have provided the Complainant with the extended time accommodation required by the Complainant's MOA. To date, neither the Complainant nor the College has provided information regarding whether the Complainant requested or needed the additional time.

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. As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

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.

Analysis

Based on OCR's investigation to date, while it is unclear whether the Complainant used or needed extra time on her final Course examination, OCR determined that the Instructor did not offer the accommodation of extra time (time and a half) for the final examination on XXXX. Specifically, the College stipulated to OCR that the Complainant received the same XXXX minutes on the final examination as all other students, rather than an additional XXXX minutes as required by her MOA.

Before OCR completed its investigation of the complaint, the College expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On August 12, 2022, the College agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. OCR will monitor the College's implementation of the Agreement until the College is in compliance with the terms of the Agreement and the statutes and regulations at issue.

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.

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 against the College 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact Jacob Griffith, the OCR attorney assigned to this complaint, at Jacob.Griffith@ed.gov or 202-245-8015.

Sincerely,

Jacob Griffith for
Letisha Morgan-Cosic
Team Leader, Team II
District of Columbia Office
Office for Civil Rights

Enclosure

cc: XXXX, Associate System Counsel and Assistant Attorney General
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