





XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXX to the complainant as testing modifications.

The complainant received the following grades on the four exams: XX on Exam 1; XX on Exam 2; XX on Exam 3; and XX on Exam 4. The complainant earned a GPA of XXXX for the spring 2014 semester, and the Academic Coordinator confirmed the complainant’s dismissal from the program by letter dated XXX XX, 2014.

In an electronic mail message (email) to the Dean of the School of XXXXX XXXXXXXXXXXXX (the Dean) on XXX XX, 2014, the complainant complained that he had to take his exams with the class.<sup>1</sup> The complainant further stated that the professor never had him sign a waiver of his right to receive the testing modification of a XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX. The Dean and the complainant arranged to meet on XXX XX, 2014, to discuss the complainant’s concerns. The complainant forwarded a copy of his email of XXX XX, 2014, to the NYIT’s Section 504 Coordinator on XXX XX, 2014.

The NYIT’s “Policies and Procedures for Students with Disabilities” includes a formal grievance procedure for responding to disability-related complaints.<sup>2</sup> The grievance procedures require that the 504 Coordinator respond to complaints alleging a violation of Section 504 with a thorough investigation that affords all interested persons an opportunity to submit evidence. OCR determined that the complainant’s email of XXX XX, 2014, which was forwarded to the Section 504 Coordinator on XXX XX, 2014, constituted a complaint alleging a violation of Section 504, to which the 504 Coordinator was obligated to respond.

The 504 Coordinator acknowledged that she did not conduct an investigation following her receipt of the complainant’s email of XXX XX, 2014. She stated that based on a discussion with the complainant shortly after she received the email, she determined that the complainant’s focus was on getting his grades changed. Specifically, the 504 Coordinator stated that the complainant raised several other issues regarding the professor’s two courses that were not related to his disability. She stated that the complainant wanted to have his grades changed without retaking any tests, which could only be accomplished through the Grade Appeals procedure. The 504 Coordinator stated that she did not conduct further investigation regarding the professor’s failure to administer his exams XX X XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX, because she believed that the complainant would be addressing his concerns through the Grade Appeals procedure. In an email dated XXXX XX, 2014, the 504 Coordinator inquired whether the complainant wished to file a formal grievance regarding the professor’s failure to provide testing modifications. The 504 Coordinator stated that the complainant did not file a grievance with her office, and decided to pursue only the academic Grade Appeal process.

The complainant met with the Dean on XXX XX, 2014. At the meeting, the Dean advised the complainant that he could file a formal grade appeal if he believed that his grades did not reflect his performance. The complainant filed a grade appeal on XXX XX, 2014. He alleged therein

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<sup>1</sup> The complainant asserted that he did not complain earlier about the professor’s failure to administer the exams XX X XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXX because he did not realize the impact of not receiving this testing modification until after he was dismissed from the program.

<sup>2</sup> See [www.nyit.edu/images/uploads/2013/campus\\_life/policies\\_and\\_procedures\\_for\\_students\\_with\\_disabilities.pdf](http://www.nyit.edu/images/uploads/2013/campus_life/policies_and_procedures_for_students_with_disabilities.pdf)

that he had not received the testing modification of a XXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX XXXXXXXXX from the professor for Exams 3 and 4, but did not  
raise any such concerns regarding Exams 1 and 2. The complainant stated that he did not raise  
concerns about Exams 1 and 2 in his Grade Appeal because Exams 3 and 4 were more important  
XXXXXX exams, and he wanted the Committee to change his overall grades in the respective  
courses so he could remain in the program.

OCR determined that the Grade Appeals Committee (the Committee) investigated the  
complainant's concerns regarding Exams 3 and 4. By letter dated XXXX XXX 2014, the  
Committee issued its determination to the complainant that the professor had failed to provide  
the complainant with the approved testing modification of a XXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX XXXXXXXXX XXXXXXXXX for Exams 3 and 4. The Committee  
offered the complainant an opportunity to retake Exams 3 and 4 with all approved testing  
modifications in XXXXXXXXXX, his state of residence, to be scheduled during the weeks of  
XXXX X and XX, 2014, respectively; and informed the complainant that he was required to  
respond within 48 hours of receipt of the determination if he wished to re-take Exams 3 and 4.  
The complainant did not respond to the Committee's offer to retake the exams. He informed  
OCR that he did not accept this offer because he believed that he should not be required to retake  
the exams; rather, the complainant believed that the NYIT should have adjusted his grades for  
the courses so he could remain in the program.

The NYIT also informed OCR that in response to the Committee's determination, the  
Department Chair counseled the professor and gave him a stern warning regarding full  
compliance with NYIT policies on accommodating students with disabilities. Specifically, the  
Department Chair advised the professor that: (a) it is imperative that he provide students with  
ODS-approved testing modifications; (b) if a student wishes to waive a testing modification, the  
student must do so explicitly in writing; and (c) it is not acceptable under any circumstances to  
have a professor's child in an examination room or classroom. The Dean also met with the  
professor and reiterated the importance of complying with these policies. The NYIT also  
informed OCR that at the next faculty meeting for the Department of XXXXXXXXXX  
XXXXXXXXXX XXXXXXXXX, the Department Chair reminded all faculty, including the  
professor, of the importance of complying in full with NYIT's policies on accommodating  
students with disabilities.

Under OCR's procedures, when the same complaint allegations have been filed through a  
recipient's internal grievance procedures, OCR generally will not conduct its own investigation.  
Instead, OCR reviews the results of the recipient's investigation and determines whether the  
recipient provided a comparable process; i.e., all allegations were investigated, appropriate legal  
standards were applied, and any remedies secured meet OCR's regulatory standards. Based on  
OCR's review of the NYIT's investigation, OCR determined that the Grade Appeals Committee  
appropriately investigated the complainant's allegation that the professor failed to provide him  
with the testing modification of a XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXX during Exams 3 and 4. Specifically, OCR determined that NYIT applied  
appropriate legal standards and offered an appropriate remedy to the complainant.

OCR determined that the complainant did not file an internal grievance regarding the professor’s failure to provide him with a XXX XXXXXXXX XXX for Exams 1 and 2; accordingly, NYIT did not conduct an internal investigation regarding this part of the complainant’s allegation filed with OCR. Therefore, OCR proceeded to investigate this portion of the complainant’s allegation. The NYIT acknowledged that the professor administered Exams 1 and 2 to the complainant in the classroom, and not XX X XXX; and that the professor had not obtained a signed waiver from the complainant to take the exams in the classroom.

On March 10, 2015, the NYIT agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified with respect to Exams 1 and 2. OCR will monitor implementation of the resolution agreement. If the NYIT fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

This letter should not be interpreted to address the NYIT’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 complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the NYIT may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

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

If you have questions, please contact Ryan Milligan, Compliance Team Attorney, at (617) 289-0189 or [Ryan.Milligan@ed.gov](mailto:Ryan.Milligan@ed.gov).

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX