



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

November 30, 2018

President Daisy Cocco De Filippis
Naugatuck Valley Community College

Via email: DDeFilippis@nvcc.commnet.edu

Re: Complaint Nos. 01-16-2012 & 01-16-2121
Naugatuck Valley Community College

Dear President De Filippis:

The U.S. Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaints we received on October 28, 2015 and July 5, 2016, alleging that Naugatuck Valley Community College (College) discriminated against the Complainant on the basis of disability. 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 any program or activity receiving 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 has jurisdiction over the College because it receives federal financial assistance from the Department and is a public entity.

The Complainant alleged that the College failed to provide her with the following necessary academic adjustments and auxiliary aids and services:

1. A note taker during the XXXXXXXX (Allegation 1);
2. Tutoring services in a XXXXXXXXXXXXXXXXXXXX during the XXXXXXXX (Allegation 2); and
3. Equal access to XXXXXXXXXXXXXXXXXXXXXXX used in her XXXXXXXX course in the XXXXXXXX (Allegation 3).

During the course of its investigation, OCR identified additional concerns regarding the College's compliance with Section 504 and Title II with respect to:

4. The College's failure to furnish note takers as a necessary auxiliary aid or service in such a way as to protect the Complainant's privacy during the XXXXXXXX (Allegation 4);

5. The College's failure to furnish note takers as a necessary auxiliary aid or service in such a way as to protect the privacy of other students with hearing, vision, or speech disabilities since December 2011 (Allegation 5); and
6. The College's failure to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and Title II, including any investigation of any complaint communicated to it alleging its noncompliance with those laws (Allegation 6).

In reaching a determination, OCR reviewed documents provided by the Complainant and the College and interviewed the Complainant, current and former College faculty and staff, and an independent contractor who served as the Complainant's XXXXXXXX at the College.

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 Allegations 3–6, which the College agreed to resolve through the enclosed resolution agreement. However, OCR found insufficient evidence to support Allegations 1–2.

OCR's findings and conclusions are discussed below.

Background

Relevant Policies and Procedures

The College provided OCR with its "Guide for Students with Disabilities," which states that students with disabilities seeking academic adjustments and auxiliary aids and services¹ from the College must "contact either the Coordinator of Disability Services or the Counselor for Students with . . . Disabilities^[2] to disclose their disability and complete the disability disclosure process." It further provides that

eligibility for academic adjustments must be supported by the appropriate documentation that describes the impact of the disability on [the student's] present level of academic performance. Because the College reserves the right to determine the nature and extent of reasonable academic adjustments, the Coordinator of Disability Services and/or the Counselor for Students with . . . Disabilities may request additional documentation. Documentation must include . . . [a c]lear statement of disability and/or diagnosis by a qualified professional with supportive testing of qualitative information[; a]cademic area(s) of impact or limitations[; a]dditional observations or recommendations which assist in identifying reasonable academic adjustments[; and the n]ame, title, address, and

¹ See the Legal Standards section, below, for a description of academic adjustments and auxiliary aids and services.

² Prior to the Coordinator of Disability Services' retirement in July 2016, the College's Office of Disability Services (ODS) was led by the Coordinator of Disability Services. At that time, the current Counselor for Students with Disabilities held the position of Counselor for Students with Learning Disabilities. To prevent confusion, the latter individual is referred to as the Counselor for Students with Disabilities throughout this document.

phone number of [the] certifying professional, as well as the date of diagnosis and/or evaluations.

The College also provided OCR with its “Disability Verification Guidelines,” which state that the required documentation for students who are XXXXXXXXXXXXXXXX includes an XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, a “[s]tatement of functional/educational limitations,” and “[r]ecommended academic accommodations and services.”³

In addition, the College provided OCR with its “Guidelines for Note Takers” (hereinafter, “Guidelines”), which state that a student with a disability to whom the College has agreed to provide notetaking assistance as a necessary academic adjustment and auxiliary aid and service “is responsible for finding a note taker in his/her class.” It also states that such students must coordinate in various ways with the note taker throughout the period in which the note taking services are being provided.⁴ The Guidelines include a notation indicating that they were either created or revised by the former Coordinator of Disability Services in December 2011. The Counselor for Students with Disabilities and Coordinator of Disability Services both informed OCR that it has been the College’s practice to follow the Guidelines and to distribute them to all students who have been approved to receive or provide notetaking assistance since at least December 2011. Both also noted that the College’s Office of Disability Services (ODS) typically authorizes such notetaking services for several students each academic year.

The Counselor for Students with Disabilities also informed OCR that when she assumed leadership of ODS in July 2016, she revised the Guidelines because she did not feel comfortable requiring students with disabilities to find their own note takers.⁵ She noted that the revised Guidelines now provide that students who have been approved for note taking assistance as a necessary academic adjustment and auxiliary aid may, but need not, identify their own note takers. If they choose not to, the College would secure a note taker for the student while maintaining the student’s anonymity throughout the process. When OCR requested that the Counselor for Students with Disabilities provide OCR a copy of the revised Guidelines, however, she provided a document dated July 2016 that retains the requirements that students with disabilities find their own note takers and coordinate with them while they are providing note taking services. OCR also determined that the College’s current “Guide for Students with

³ The Section 504 regulation addressing post-secondary education refers to “academic adjustments and auxiliary aids,” while the Title II regulation refers to “reasonable modifications.” As used here, “accommodations and services” appears to refer 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).

⁴ For example, the Guidelines state that students receiving notetaking assistance must “[e]stablish a process with the note taker for receiving copies of the notes in a timely manner” and “arrange a convenient time to discuss” any “questions about the notes” with the note taker. Note takers must “[t]ake notes [only] when the student [with a disability] is present,” “[t]ell the student [with a disability] if note taking is compromising [the note taker’s] participation in the class,” “[t]ell the student [with a disability] if he or she is asking for something that [the note taker is] unable to provide,” “[u]se note taking materials provided by the student [with a disability] or work out another method which meets both [parties’] needs,” and “[a]tempt to let the student know if [the note taker] will be absent.”

⁵ The Counselor for Students with Disabilities emphasized that, although she did not personally feel comfortable with this aspect of the Guidelines because she “felt it was uncomfortable for a new student to go into a class and ask someone to take notes for them,” she did not believe that it was otherwise inappropriate to require students with disabilities to find their own note takers.

Disabilities,” posted on its website, likewise states that “[t]he student [with a disability] is responsible for finding a note taker in his/her class, and/or a reader or scribe for in class assistance.”⁶

Provision of Note Taking Assistance to the Complainant

The Complainant was enrolled at the College from XXXXXXXX through XXXXXXXX. On XXXXXXXX, she provided ODS an XXXXXXXXXXXXXXXXXXXX with an XXXXXXXX dated that same day. The XXXXXXXXXXXXXXXXXXXX, completed by a XXXXXXXXXXXXXXX, states that the Complainant has “XXXXXXXXXXXXXXXXXXXX” and recommends that she receive a “note taker . . . for school work.” On XXXXXXXX, the Coordinator of Disability Services met with the Complainant, concluded that she had sufficiently documented her disability, and filled out an Academic Adjustment Agreement Form (hereinafter, “Form”) stating that a “note taker to be obtained by student in class” had been approved as a necessary academic adjustment and auxiliary aid and service in each of the Complainant’s XXXXXXXX courses. The Complainant signed the Form to indicate her acceptance.

When the Complainant brought the Form to her XXXXXXXXXXXXXXXXXXXX instructor at the start of the XXXXXX semester, the instructor told the Complainant that she would help her identify a note taker in that course. The instructor informed two of the Complainant’s classmates that the Complainant had special needs and that she required assistance from a note taker. One of these classmates agreed to take notes for the Complainant. The Complainant confirmed that this classmate subsequently XXXXXXXXXXXXXXXXXXXX, took notes, and gave her a copy of the notes after class.

On XXXXXXXXXXXXXXX, the Complainant sent an email to the Coordinator of Disability Services and the Counselor for Students with Disabilities stating that “[y]ou both informed me that I had to find my own services when I spoke with you [at] the beginning of this semester.” The Coordinator of Disability Services responded that, “[a]s . . . discussed during th[e] XXXXXXXXXXXX appointment, [notetaking] service[s] . . . require you to identify a student in the class who would provide copies of their [sic] notes for you.” The Complainant did not independently attempt to obtain a note taker for any course during the XXXXXXXX semester, which she informed OCR was due to the fact that she was XXXXXXXX and did not feel comfortable asking others if they would be willing to provide this service for her. She received a D in each course in which she was enrolled during the XXXXXXXX semester, and the College subsequently sent her an “official warning” regarding her “lack of satisfactory academic progress.”⁷

⁶ See <http://www.nv.edu/Portals/0/documents/studentsservices/NVCCGuideforStudentswithDisabilities.pdf#page=19>. An abbreviated version of the “Guide for Students with Disabilities” posted elsewhere on the College’s website does not include any requirements specific to notetaking services. See <https://www.nv.edu/Portals/0/Documents/CAPSS/DisabilityServices/GuideStudentsDisabilities.pdf>.

⁷ The Complainant attributed her poor academic performance to the lack of a note taker in most of her courses and the disclosure of her need for a note taker to her classmates in the remaining course. The Complainant’s instructors and ODS staff variously attributed her poor academic performance to: a failure to utilize available tutoring and other resources, ask for assistance, and take additional time to complete her tests; not turning in some assignments and turning others in late; and a general “difficulty completing the work.”

On XXXXXXXXXX, the Coordinator of Disability Services filled out a Form stating that a “note taker to be obtained by student in class” had been approved as a necessary academic adjustment and auxiliary aid and service for the Complainant’s XXXXXXXXXXXXXXXX. The Complainant signed the Form to indicate her acceptance. When the Complainant sent the Coordinator of Disability Services an email on XXXXXXXXXX requesting that “the school . . . provide [a note taker] to” her, the Coordinator of Disability Services reiterated that “it is your responsibility to obtain a note taker in class.” Nevertheless, the Coordinator of Disability Services sent an email to the Complainant’s XXXXXXXXX instructor on XXXXXXXXXX to request that she “assist [the Complainant] in identifying a student in class who would be willing to provide [the Complainant] with copies of their [sic] notes.” The XXXXXXXXX instructor made an announcement in the Complainant’s class to solicit a student to serve as a note taker, but she did not identify the Complainant as the intended recipient of the notes. On or around XXXXXXXXXXXXXXXX, the College arranged for a student in the Complainant’s XXXXXXXXX course to take notes in that course for the Complainant. The Complainant ultimately received an A in the XXXXXXXXX course.⁸

The Complainant's XXXXXXXXXXXXXXXX Course

On XXXXXXXX, the Coordinator of Disability Services filled out a Form stating that “XXXX”⁹ was “to be provided” to the Complainant as a necessary academic adjustment and auxiliary aid and service in the Complainant’s XXXXXXXXXXXXXXXX course “pending availability.”¹⁰ The Complainant signed the Form to indicate her acceptance and the Coordinator of Disability Services subsequently contracted with the Complainant’s requested provider (hereinafter, “the XXXXXXXX”) to provide XXXXXXXXXXXXXXXX services to the Complainant in the XXXXXXXX course.

The Complainant provided OCR a copy of the XXXXXX course syllabus, which lists XXXXXXXXXXXX among the required course materials. The syllabus notes that the XXXXXX course is divided into 13 required units entitled “XXXXXXXX,” “XXXXXXXX,” “XXXXXXXX,” “XXXXX,” “XXXXXX,” “XXXXXX,” “XXXXXXXXXXXXX,” “XXXXXXXXXXXXXX,” “XXXXXXXXXXXXX,” “XXXXXX,” “XXXXXX,” “XXXXXX,” “XXXXXX,” “XXXXXX,” and “XXXXXXXXXXXXXXXXXXXXX,” with 14 course objectives and 17 learning outcomes associated with these units. Answers to the course objectives are “provided via multimedia computer modules, lecture discussions, and [the] textbook,” and “[t]he questions on the lecture examinations . . . come from the objectives.” In addition to the 13 required units, the syllabus notes that students may complete up to six “optional extra credit modules . . . to help improve

⁸ This grade did not count toward the Complainant's cumulative grade point average (CGPA), however, because the XXXXXX course was designated as a "developmental course," which "do[es] not carry grade points" and "do[es] not count towards the required credits necessary for graduation." Consequently, the College placed the Complainant on academic probation at the end of the XXXXXX semester because her CGPA remained below 2.00. The College informed the Complainant that she would be suspended if her CGPA did not improve the following semester.

[illegible]

¹⁰ During the XXXXXXXX, the Complainant requested that the College provide her with XXXX services in all of her classes. The College began providing this service to the Complainant in lieu of note taking services in her XXXXXXXXXXXXXXXXXXXX, but it was unable to locate a XXXXXXXXX who was available for the Complainant's XXXXXXXXXXXXXXXX course.

[their] grade[s],” which are “similar to that of a Required Unit in that there is a list of objectives to learn.” It notes that “student[s] will have to pass a quiz” on these objectives “to get the allotted points.” The syllabus concludes by stating that “XXXXX classes are usually not ‘easy’ courses, and XXXXXXX as a branch of XXXXXXX is no exception.”

[illegible]

Later that same day, the Complainant's XXXXXXXX instructor sent an email to the Counselor for Students with Disabilities to inform her that the XXXXXXXX course

is taught through a combination of multimedia lectures, discussion groups and XXXXXXXX exercises. . . . Students spend approximately 90 to 120 minutes watching and listening to [the multimedia lectures] while they record notes in a study guide. All information that must be recorded in the study guide appears in writing on the computer screen. Students interact with the computer and advance through the presentation at their own pace. Much of the XXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Any information relevant to the course objectives XXXXXXXXXXXXXXXXXXXXXXXX. The XXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX could be XXXXXX for [the Complainant] if [the XXXXXX] was XXXXXX [the Complainant] and both were using a XXXXXXXXXXXX.

The XXXXXXXX instructor informed the Counselor for Students with Disabilities that the XXXXXXXX had voiced concerns to her about the Complainant's XXXXXXXXXXXX in the multimedia lectures, but the XXXXXXXX instructor observed that the Complainant did not appear to have any difficulty completing her study guide while watching and listening to the multimedia lecture without the XXXXXXXXXXXXXXXX. The XXXXXXXX instructor also noted that her lectures would "include short [XXXXXXX] XXXXXXXX relevant to each of the unit objectives" and asked how she should accommodate the Complainant to ensure her "full participation and success in [the] class."

Contrary to the XXXXXXXX instructor's representations, the XXXXXXXX informed OCR that speech bubbles would appear on the screen during the multimedia module presentations, but there was also a significant amount of substantive information presented in the modules that was XXXXXXXXX, including XXXXXXXXXXXX. The Complainant agreed with the XXXXXXXX description of the modules and disputed the XXXXXX instructor's representations. The Counselor for Students with Disabilities informed OCR that she never sat in on a XXXXXXXX class to observe the multimedia modules.

The following day, the Counselor for Students with Disabilities informed the Complainant that “there will be not be any changes to [her] academic adjustments.” She informed the Complainant and XXXXXXX that the College’s Director of Information Technology (IT) had installed a “XXXXX” so that the XXXXXXX could XXXX each module presentation using XXXXXXXXXXXXXXX and XXXXXXXXXXXXXXX on a computer XXXXXXX the Complainant. She also informed the XXXXXXX that she had spoken with the XXXXXXX instructor and confirmed that “XXXX w[ould] not be utilized during the class.” The Counselor for Students with Disabilities informed OCR that she provided the multimedia modules to the College’s IT department and was informed that it was not possible to XXXXXXX the material in those modules after it had been created. She also noted that, through the use of the XXXXXXX, it would be obvious to anyone else in the classroom that the XXXXXXX was providing assistance to a student XXXXXXXXXXXXXXX.

The next morning, following the second XXXXXXX class session, the XXXXXXX emailed the Coordinator of Disability Services and Counselor for Students with Disabilities to inform them that “[t]he XXXXXXX worked” and she had “XXXXXXXXX the modules just fine.” She also noted that the XXXXXXX instructor “did XXXX [XXXXXXXX] XXXXX in class” after telling her that the Counselor for Students with Disabilities had told her that it “was fine to use them.” She reported that she was “not able to XXXXXXX them as the XXXXXXXXXXXXXXX” and the Complainant “seems to XXXX some but not all of it.” Shortly thereafter, the XXXXXXX instructor sent an email to the Counselor for Students with Disabilities to inform her that the Complainant had “completed her computer module while her [XXXXXXXX] transcribed the XXXX.” She also noted that she “show[ed] some XXXX during lecture that the [XXXXXXXX] was unable to XXXXXX [,] but [she had] uploaded the XXXX to” the course website. The XXXXXXX instructor suggested that the XXXXXXX “XXXX them ahead of time and XXXXXXXXXXXXXXX.” She also reported that the Complainant had told her “that she was able to XXXXXXXXXXXX on the computer and while XXXXXXXXXXXXXXX in the classroom.” In contrast, the Complainant informed OCR that she told the XXXXXXX instructor that she was able to XXXX some of the information in the multimedia modules with the use of her XXXXXXX, but she could not XXXX everything and thus had difficulty following along with the XXXXXXXXXXX material. Shortly thereafter, the XXXXXXX instructor uploaded all the XXXX that she had XXXX during lecture and that she had intended to XXXX during lectures later in the term to the course website, verified that all of these XXXXX were XXXXXXXXXXXXXXX, and informed the Complainant and XXXXXXX that she had taken these actions. On XXXXXXXXXXX, the Coordinator of Disability Services spoke with the XXXXXXX instructor regarding her use of XXXXXXXXXXXXXXX in the XXXXXXX class and confirmed once again that XXXXX would no longer be used in class. She emailed the XXXXXXX to inform her of this conversation later that same day. The XXXXXXX instructor did not subsequently show any XXXXXXXXXXXXXXX during the lecture portions of the XXXXXXX course.

On XXXXXXXXXXX, the XXXXXXX emailed the Counselor for Students with Disabilities to inform her that she had been “running into difficulty with the XXXXXXX modules.” She explained that, since the prior week’s classes, “there are more slides with XXXXXXXXXXXXXXX” and “slide[s] with much more XXXXXXXXXXXXXXX.” She asked if she could “XXXX [the

modules] up prior to class” and noted that she had “approached the instructor,” who “thought it was a good idea.” She noted that she would bill the College seventy dollars per hour for the 32.5 hours that it would take her to XXXXXXXX all of the remaining modules in the XXXXXXXX course, not including four extra credit modules that the Complainant might wish to access as well. The Counselor for Students with Disabilities responded that she would “need to obtain authorization first.” The XXXXXXXX informed OCR that the Counselor for Students with Disabilities subsequently informed her that additional funding was not authorized for the XXXXXXXX to XXXXXXXX the modules prior to class, and, according to the College’s IT department, it was not possible to XXXXXXXXXXXXXXXX in the modules. Instead, the Counselor for Students with Disabilities provided the Complainant a compact disc (CD) containing all of the multimedia modules for her use at home. The XXXXXXXX informed OCR that the Counselor for Students with Disabilities told her that the Complainant would have to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX, but “there wasn’t any acknowledgement that [the Complainant] still XXXXXXXXXXXXXXXXXXXXXXXX” and it was thus “not clear how giving her the CD XXXXXXXXXXXXXXXX would provide much help.” Over the course of the term, the Counselor for Students with Disabilities emailed the Complainant twice “to remind [her] to use the . . . CD for both studying and reviewing” because “[i]t is a great tool and you can use it at home or wherever you are.” The Complainant ultimately failed the XXXXXXXX course.¹¹

The XXXXXXXX instructor informed OCR that she was not aware of the Complainant experiencing any difficulty accessing any information in the multimedia modules after the College installed the XXXXXXXX, but she also stated that she was unsure whether the XXXXXXXX provided the Complainant with access to the information in the modules that was equally effective to the access the Complainant would have been afforded had the modules been XXXXXXXXXXXXXXXX prior to class, as the Complainant and XXXXXXXX had requested.

The Complainant’s Ability to Access the College’s Tutoring Services

The Complainant alleged that during the XXXXXXXX semester, she complained to the Coordinator of Disability Services and the Counselor for Students with Disabilities regarding her inability to utilize the tutoring services offered to all students at the College’s Academic Center for Excellence (ACE) because there was XXXXXXXXXXXXXXXX for the Complainant to effectively XXXX the tutor. The XXXXXXXX informed OCR that the Complainant had told her that she had asked the Coordinator of Disability Services to provide her with tutoring XXXXXXXXXXXXXXXX, but she was not aware how the College had responded. Upon request, neither the Complainant nor the College provided OCR any documentation indicating that the Complainant ever raised this concern with any College employee. Both the Coordinator of Disability Services and the Counselor for Students with Disabilities informed OCR that they had never had any concerns about the Complainant’s ability to access the publicly-available tutoring services at the ACE Center due to the XXXXXXXX there, and they were not aware of the Complainant ever raising such a concern with any College employee.

¹¹ The Complainant attributed her poor performance in the XXXXXXXX course to the lack of XXXXXXXXXXXX XXXXXXXX of the material in the multimedia modules, whereas the XXXXXXXX instructor asserted that she “didn’t think [the Complainant] studied,” “her cell phone was a distraction,” and she “miss[ed] nine hours of class.”

The College's Section 504/Title II Coordinator

During the course of its investigation, OCR interviewed the College's Section 504/Title II Coordinator.¹² He informed OCR that he had served as the College's Section 504/Title II Coordinator since 2011 or 2012 and as the College's Director of Facilities since 2006. He noted that, in his role as Section 504/Title II Coordinator, no one reported to him and he did not direct or supervise the activities of the ODS. He informed OCR that he had received no formal training regarding Section 504, Title II, or the College's obligations with respect to providing necessary academic adjustments and auxiliary aids and services to qualified students with disabilities. He also noted that if students had any disability-related concerns relating to academics, the Counselor for Disabilities handled those concerns and he was not involved in that process. Rather, he described his responsibilities as limited to "providing access to facilities and grounds" and "[m]aking sure that people with disabilities have access to everything they need in classrooms, common spaces, parking, libraries, etc."

Both the Coordinator of Disability Services and the Counselor for Students with Disabilities confirmed that they had never had any formal relationship with the Section 504/Title II Coordinator. They noted that when they had received complaints concerning alleged violations of Section 504 or Title II, they referred them to the College's Dean of Students for processing. They also noted that, to the best of their knowledge, the Section 504/Title II Coordinator was not notified of such complaints or involved in their processing in any way.

The College's Section 504/Title II Coordinator informed OCR that he was generally aware of the Guidelines, but he did not know if they had ever been revised or to whom the Guidelines were distributed. He also stated that he had no concerns regarding the Guidelines or the manner in which the College had implemented them.

The College's Section 504/Title II Coordinator informed OCR that he did not know the Complainant and had never been made aware of any concerns that she had raised with the College. When informed of the XXXXXXXXXX email that the Complainant sent to him requesting that the College immediately XXXXXXXXXX and multimedia material being used in her XXXXXXXX course in order to provide her equal access to that information, the Section 504/Title II Coordinator asserted that he did not recall having received that email.

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 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

¹² The College employs more than 50 persons and is thus required to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and Title II, including any investigation of any complaint communicated to it alleging its noncompliance with those laws or alleging any actions that would be prohibited by those laws. *See* 34 C.F.R. § 104.7(b); 28 C.F.R. § 35.107(b).

regulation at § 104.44(d) requires a college 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 to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

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

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

Section 504 and Title II do not require a college to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful, and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

A college is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead, undue burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.

The Title II regulation, at 28 C.F.R. § 35.160, requires public colleges to ensure that communication with individuals with hearing, vision, or speech disabilities is as effective as communication with individuals without disabilities. To do this, colleges must provide appropriate auxiliary aids and services where necessary to provide effective communication so that individuals with disabilities have an equal opportunity to participate in, and enjoy the benefits of, the services, programs, and activities of the college. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual, the nature, length, and complexity of the communication involved, the context in which the communication is taking place, the number of people involved, and the importance of the communication. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

Title II requires colleges to give primary consideration to the auxiliary aid or service requested by the individual with a disability when determining what is appropriate for that individual. Because the individual is most familiar with his or her disability and is in the best position to determine what type of aid or service will be effective, a college must honor the individual's request unless it can demonstrate that another effective means of communication exists or that use of the means requested would fundamentally alter the nature of a service, program, or activity, or would impose an undue financial and administrative burden. Even if the college reaches such a conclusion, it still has an obligation to provide an effective auxiliary aid or service to the maximum extent possible.

The Section 504 regulation, at 34 C.F.R. § 104.7(a), requires each college that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with Section 504. The Title II regulation, at 28 C.F.R. § 35.107(a), requires each public college that employs 50 or more persons to designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, including any investigation of complaints alleging noncompliance with Title II. The college must make sure that the individual(s) designated to coordinate the college's efforts to comply with Section 504 and Title II have adequate training as to what conduct constitutes a violation of those laws and are able to explain how the College's grievance procedures providing for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II operate. In addition, the individual(s) must be familiar with the requirements of Section 504 and Title II, able to communicate those requirements to other individuals at the college who may be unaware of their responsibilities, and able to promptly correct any failure by individual employees to comply with those responsibilities.

Analysis

Allegation 1, 4, and 5

OCR finds that there is insufficient evidence that the College failed to provide the Complainant with a note taker as a necessary academic adjustment and auxiliary aid and service during the XXXXXXXX.

OCR determined that the College established reasonable requirements and procedures for individuals with XXXXXXXXXXXX, such as the Complainant, to provide documentation of their disabilities and request academic adjustments and auxiliary aids and services. The Complainant complied with these procedures by notifying the College of her disability and providing the required documentation to ODS to substantiate that disability and the Complainant's need for a "note taker . . . for school work." In response, the College authorized the Complainant to access a note taker in all of her classes throughout the XXXXXXXX, and the Complainant accepted the College's determination that this was an appropriate academic adjustment.

Although OCR finds insufficient evidence that the College failed to provide the Complainant with a note taker as a necessary academic adjustment and auxiliary aid and service during the XXXXXXXX, OCR finds sufficient evidence that the College failed to furnish note takers as a necessary auxiliary aid or service for the Complainant during the XXXXXXXX semester in such a way as to protect her privacy.

After determining that the Complainant required a note taker in each of her XXXXX semester classes because of the functional limitations imposed by her XXXXXXXXXXXX, the College permitted her to access the services of a note taker only if the note taker was "obtained by [the Complainant] in class." The College thereafter repeatedly informed the Complainant that, pursuant to the Guidelines, she was "responsible for finding a note taker in [her class(es)]." By placing the burden on the Complainant to identify her own note taker, the College required her to unnecessarily disclose to third parties that she was unable to effectively take her own notes during class, which unnecessarily infringed upon the Complainant's privacy.¹³ The Complainant informed OCR that she did not attempt to obtain a note taker for any course during the XXXXXXXX semester because she was new to the College and did not feel comfortable asking others if they would be willing to provide this service for her. The Counselor for Students with Disabilities likewise informed OCR that she "felt it was uncomfortable for a new student to go into a class and ask someone to take notes for them." In contrast, the College provided a note taker to the Complainant in her XXXXXXXX XXXXXXXX course without disclosing, or requiring the Complainant to disclose, her disability or related functional limitations to her classmates.

¹³ The College could have achieved the same ends in a manner that was more protective of the Complainant's privacy by, for example, requesting that each of the Complainant's instructors solicit a volunteer at the beginning of the semester to take notes and leave them with the instructor at the end of each class, with the Complainant later retrieving each class's notes from the instructor at a mutually convenient time.

OCR also finds sufficient evidence that the College failed to furnish note takers as a necessary auxiliary aid or service for other students with hearing, vision, or speech disabilities in such a way as to protect their privacy since at least December 2011.

The College's Counselor for Students with Disabilities and Coordinator of Disability Services both informed OCR that the College has required all students with disabilities whom ODS has approved to receive notetaking assistance as a necessary auxiliary aid or service – including students with hearing, vision, or speech impairments – to obtain their own note takers since at least December 2011. Both noted that ODS typically authorizes such notetaking services for several students each academic year. The Guidelines indicate that this policy and practice has been in place at the College since at least December 2011, and despite the Counselor for Students with Disabilities' assertion that the College no longer requires individuals to obtain their own note takers, the College's Guidelines and its Guide for Students with Disabilities both indicate that the College's written policies have not changed in this regard.¹⁴

Accordingly, OCR found sufficient evidence that the College failed to furnish note takers as a necessary auxiliary aid or service for the Complainant during the XXXXXXXX semester – and for other students with hearing, vision, or speech disabilities since at least December 2011 – in such a way as to protect their privacy.

Allegation 2

OCR finds that there is insufficient evidence that the College failed to provide the Complainant with tutoring services in a XXXXXXXXXXXXXXXX as a necessary academic adjustment and auxiliary aid and service during the XXXXXXXX.

Although the Complainant informed both OCR and the XXXXXXXX that she had complained to the Coordinator of Disability Services and the Counselor for Students with Disabilities regarding her inability to utilize the tutoring services offered to all students at the College's ACE Center because there was XXXXXXXXXXXXXXXXXXXX for the Complainant to XXXXXXXXXXXXXXXX, neither the Complainant nor the College provided OCR any documentation indicating that the Complainant ever raised this concern with any College employee. In addition, both the Coordinator of Disability Services and the Counselor for Students with Disabilities informed OCR that they were not aware of the Complainant ever raising such a concern with them or any College employee.

Accordingly, OCR found insufficient evidence that the College failed to provide the Complainant with tutoring services in a XXXXXXXXXXXXXXXX as a necessary academic adjustment and auxiliary aid and service during the XXXXXXXX.

¹⁴ During the course of OCR's negotiations with the College, the College voluntarily revised its Guide for Students with Disabilities to remove the requirement that students with disabilities find their own note takers or coordinate with a note taker once he or she has been identified, and to expressly state that the College will comply with the requirements of 28 C.F.R. § 35.160(b)(2) in providing auxiliary aids and services to students with disabilities.

Allegation 3

OCR finds that, although there is insufficient evidence that the College failed to provide the Complainant with equal access to XXXXXXXXXXXX information presented in certain XXXXX used in her XXXXXX course in the XXXXXXXX, there is sufficient evidence that the College failed to provide the Complainant with equal access to XXXXXXXXXXXXXXXX information used in the multimedia modules in that course.

First, OCR determined that the College provided the Complainant equal access to the XXXXXXXXXXXX that were initially XXXXX in her XXXXXXXX lectures and later uploaded to the XXXXXXXX course website. Following the first XXXXXXXX lecture, the Complainant requested that these XXXXXXXXXXXX to ensure that she received equal access to the XXXXXXXX information in the XXXXXXXX. Although one XXXXXXXXXXXX was XXXXX during the second XXXXXXXX lecture, the XXXXXXXX instructor subsequently uploaded all of the XXXXX that she had shown during the first two lectures, and all of the XXXXX that she intended to XXXX during subsequent lectures, to the course website. She ensured that all of these XXXX were XXXXXXXXXXXX and informed the Complainant that she had taken these actions prior to the third XXXXXXXX lecture and well in advance of the first scheduled assessment in the course. OCR found that, with respect to these XXXXX, the College gave primary consideration to the Complainant's requested auxiliary aid or service and honored her request in a timely manner and in such a way as to protect her privacy and independence.

In contrast, OCR determined that the College failed to provide the Complainant equal access to the thirteen required and six extra credit multimedia modules in her XXXXXXXX course. According to the XXXXXXXX instructor, each of these modules takes approximately 90 to 120 minutes for a typical student to complete. In total, this constitutes approximately 28 to 38 hours of multimedia lectures covering such admittedly "not easy" topics as "XXXXXXX," "XXXXXXX," and "XXXXXXX." The information in these modules was of significant importance to the Complainant, whose grade in the course was directly tied to her level of mastery of this information.

OCR found that the College gave primary consideration to the Complainant's request to XXXXXXXX these multimedia modules, but when the College's IT department determined that it was not possible to XXXXXXXXXXXXXXXX the modules, the College timely provided what initially appeared to be another effective means of communication – installing a XXXXXXXX to enable the XXXXXXXX to XXXXXXXX the modules in XXXXXXXXXXXXXXXXXXXX. However, following the fifth required module, the XXXXXXXX notified the College that this means of communication was no longer effective and suggested an alternative that more closely approximated the XXXXXXXXXXXX that the Complainant had initially requested and that would afford the Complainant greater privacy and independence than XXXXXXXXXXXX through use of the XXXXXXXX (i.e., the XXXXXXXXXXXXXXXXXXXX in each module prior to each class). The College did not dispute the XXXXXXXX concerns – which OCR credits, as she was best positioned to assess her own performance as the information in the later modules was presented XXXXXXXXXXXX – but informed her that the College would not authorize additional funding for

her to XXXXXXXX these modules in advance of the lectures.¹⁵ Instead, the College provided the Complainant a CD containing all of the modules for her use at home and noted that she would have to XX. The College has not explained how providing the CD to the Complainant constituted an effective means of communication in an accessible format for the Complainant, given that her XXXXXXXX XXXXXXXX imposed the same functional limitations both in and out of the classroom.

OCR credits the Complainant's assertion that she was not able to follow all of the content in the modules even after the installation of the XXXXXXXX, as she was most familiar with her disability and best positioned to assess her own functional limitations relative to the content that was being presented. Even assuming the truth of the XXXXXXXX instructor's assertion that "XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX," it is undisputed that substantive XXXXXXXX information was presented in the modules which the XXXXXXXX was not able to adequately XXXXXXXXXXXXXXXXXXXXXXXX.¹⁶ This did not afford the Complainant an equal opportunity to participate in, and enjoy the benefits of, the XXXXXXXX course curriculum.

Accordingly, although OCR found insufficient evidence that the College failed to provide the Complainant with equal access to XXXXXXXX presented in certain XXXXXXXX used in her XXXXXXXX course in the XXXXXXXX, there is sufficient evidence that the College failed to provide the Complainant with equal access to XXXXXXXX used in the multimedia modules in that course.

Allegation 6

OCR finds that there is sufficient evidence that the College failed to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and Title II, including any investigation of any complaint communicated to it alleging its noncompliance with those laws.

As noted above, the College must ensure that the individual designated to coordinate its efforts to comply with Section 504 and Title II – here, the College's Section 504/Title II Coordinator – has adequate training as to the requirements of those laws and what conduct constitutes a violation; is able to communicate those requirements to other individuals at the College who may be unaware of their responsibilities; is able to promptly correct any failure by individual employees to comply with those responsibilities; and is able to explain how the College's grievance procedures providing for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 or Title II operate.

¹⁵ The XXXXXXXX informed the College that she would charge \$2,275 to XXXXXXXX all of the remaining required modules in the XXXXXXXX course prior to each class session. The College has not asserted that the XXXXXXXX XXXXXXXX of the modules prior to each class would fundamentally alter the XXXXXXXX course or impose an undue burden on the College.

¹⁶ For example, the XXXXXXXX instructor noted that the modules included XXXXXXXX "references to textbook pages[] and paraphrasing of definitions" – information that would allow XXXXXXXX individuals to better understand course concepts and which is thus arguably "relevant to the course objectives." OCR notes that the XXXXXXXX instructor concurred that the XXXXXXXX plan to XXXXXXXX the modules prior to each class was a good idea, and she informed OCR that she was unsure whether the auxiliary aids and services that the College had offered provided the Complainant with equally effective access to the information in the modules.

OCR determined that the College's Section 504/Title II Coordinator did not have an adequate understanding of his obligations under Section 504 and Title II and was consequently not effectively coordinating the College's efforts to comply with and carry out its responsibilities under those laws. He informed OCR that, in his role as Section 504/Title II Coordinator, no one reported to him; he did not direct or supervise the activities of the ODS; and he had not been apprised of the Complainant's or any other student's complaints of disability-based discrimination relating to academics. Rather, he described his Section 504 and Title II job responsibilities as limited to ensuring that individuals with disabilities had physical access to the College's facilities and grounds. The College's Coordinator of Disability Services and Counselor for Students with Disabilities both informed OCR that complaints regarding other forms of disability-based discrimination or retaliation were directed to the College's Dean of Students and the Section 504/Title II Coordinator was not notified, or involved in the processing, of such complaints in any way. The Section 504/Title II Coordinator also informed OCR that he had received no formal training regarding Section 504, Title II, or the College's obligations with respect to providing necessary academic adjustments and auxiliary aids and services to qualified students with disabilities.¹⁷

Accordingly, OCR has found sufficient evidence that the College failed to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504 and Title II, including any investigation of any complaint communicated to a responsible employee alleging the College's noncompliance with any aspect of those laws – not merely those provisions of the laws concerning physical access to the College's facilities and grounds.¹⁸

Conclusion

On November 20, 2018, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of noncompliance. Under Section 304 of OCR's *Case Processing Manual*, a complaint will be considered resolved and the College deemed compliant when the College enters into an agreement that, fully performed, will remedy the identified areas of noncompliance. OCR will monitor closely the College's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information if necessary to determine whether the College has fulfilled the terms of the Agreement. Once the College has satisfied the commitments under the Agreement, OCR will close the case. As stated in the Agreement entered into by the College on November 20, 2018, if the College fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial

¹⁷ Perhaps relatedly, the College's Section 504/Title II Coordinator also informed OCR that he had no concerns about the College's practice of requiring qualified students with disabilities who had been granted notetaking services as a necessary academic adjustment and auxiliary aid and service to obtain their own note takers.

¹⁸ During the course of OCR's negotiations with the College, the College voluntarily designated a new Section 504/Title II Coordinator and two Deputy Coordinators to coordinate the College's efforts to comply with and carry out its responsibilities under Section 504 and Title II, and it has provided comprehensive training on the requirements of Section 504 and Title II to these individuals and to other employees involved in the College's Section 504 and Title II compliance efforts.

proceedings, including to enforce the Agreement, OCR shall give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Regarding any allegation for which OCR made a finding of insufficient evidence, the Complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the Complainant must explain why the factual information was incomplete, inaccurate, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the Complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the College. The College has the option to submit to OCR a response to the appeal. The College must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the College.

This concludes OCR's investigation of the complaints. 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not 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. 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 any questions, you may contact Civil Rights Attorney Paul Easton at (617) 289-0008 or by e-mail at Paul.Easton@ed.gov.

Sincerely,

/s/ Adrienne M. Mundy-Shephard
Adrienne M. Mundy-Shephard
Acting Regional Director

Enclosure

cc: Ernestine Yuille Weaver, Esq. (via email: EWeaver@commnet.edu)