

July 10, 2015

Dr. Calvin O. Butts, III  
President  
State University of New York College at Old Westbury  
P.O. Box 210  
Old Westbury, New York 11568

Re: Case No. 02-15-2061  
State University of New York, College at Old Westbury

Dear President Butts:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the State University of New York, College at Old Westbury (the College). The complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with the following approved auxiliary aids and services during the fall 2014 semester: (a) note takers; (b) Kurzweil text-to-speech software (Kurzweil Software); (c) books on tape; and (d) a Connectline microphone and streamer (Connectline System) (Allegation 1). The complainant also alleged that the College discriminated against her, on the basis of her disability, by denying her request for Communication Access Realtime Translation (CART) services as a necessary auxiliary aid (Allegation 2); and failing to respond appropriately to complaints her and her mother made regarding the College's alleged failure to provide approved and/or necessary auxiliary aids and services during the fall 2014 semester (Allegation 3).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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 receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and College staff. OCR also reviewed information that the complainant and the College submitted. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with the following approved auxiliary aids and services during the fall 2014 semester: (a) note takers; (b) Kurzweil Software; (c) books on tape; and (d) a Connectline System. The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to modify academic requirements when necessary to ensure that the requirements are not discriminatory on the basis of disability, and to take steps to ensure that no qualified individual with a disability is subjected to discrimination because of the absence of educational auxiliary aids and/or services. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids/services. It is also the student's responsibility to know and follow a postsecondary school's procedures for requesting an academic adjustment or auxiliary aids/services. In reviewing allegations regarding the provision of academic adjustments or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments or auxiliary aids/services were required; (2) the academic adjustments or auxiliary aids/services were necessary; (3) the appropriate academic adjustments or auxiliary aids/services were provided; and (4) the academic adjustments or auxiliary aids/services were of adequate quality and effectiveness.

The complainant enrolled in four courses for the fall 2014 semester: American People I (course 1); Foundations of Reading (course 2); English Literature I: Beowulf 18<sup>th</sup> Century (course 3); and Calculus & Analytic Geometry I (course 4). On July 31, 2014, prior to the start of the semester, the complainant informed the Director of the College's Office of Services for Students with Disabilities (OSSD) that she had recently suffered a hearing loss in her right ear. On the first day of the fall 2014 semester, the complainant completed a "Request for Letters to Professors for Academic Accommodations" form, wherein she requested the following auxiliary aids and services, among other things: (1) Kurzweil Software; and (2) "a microphone for professors to wear to connect to [her] hearing aid."<sup>1</sup> On September 25, 2014, the College agreed to provide the following auxiliary aids and services to the complainant for the fall 2014 semester, pursuant to an Accommodations Agreement Form: (1) a note taker; (2) Kurzweil Software;<sup>2</sup> (3) e-texts;<sup>3</sup> and (4) a voice recorder. The OSSD director noted on the form that the complainant's hearing needs were being evaluated due to recent hearing loss, and that the provision of hearing technology would be determined after such evaluations were completed, including possible

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<sup>1</sup> The complainant had previously been approved to receive certain academic adjustments and auxiliary aids and services to accommodate her dyslexia, from fall 2012 through spring 2014.

<sup>2</sup> According to the manufacturer website, Kurzweil text-to-speech software provides reading, writing and test-taking software literacy solutions for struggling readers and writers. Kurzweil includes the highest quality Optical Character Recognition (OCR) software available, which reproduces scanned print documents with the exact layout and format found in the original; then the software can read the document aloud. In this way Kurzweil software products give reading disabled users access to casual reading, workplace documents, and classroom curriculum; and the freedom to read and write without the need for a tutor or human assistant.

<sup>3</sup> An e-text is a written document, in this instance a textbook, in digital format.

provision of a Connectline System.<sup>4</sup> The complainant signed the Accommodations Agreement Form on September 25, 2014.<sup>5</sup>

With respect to Allegation 1(a), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with note takers. Specifically, the complainant alleged that the College failed to provide any note takers for three of her four classes. The complainant further alleged that in the one class where she was provided a note taker, this service was only provided for one week, and not until after her midterm examination.<sup>6</sup> As stated above, a note taker was an approved accommodation pursuant to the Accommodations Agreement Form, dated September 25, 2014.

OCR determined that the director attempted to secure note takers for the complainant by advertising the need for student note takers in the College's Student Connections E-Newsletter on September 11 and 16, 2014. OCR determined that this announcement asked for note takers generally (for all classes) and did not identify which classes or students needed note takers. The director also provided the Student with an announcement to share with her professors as a means to identify potential note takers. The director acknowledged that she did not make any further efforts to secure a note taker for the Student. The College informed OCR that it identified and assigned a note taker to the complainant for course 1 on September 22, 2014; for course 2 on October 17, 2014;<sup>7</sup> and for course 3 on October 23, 2014. The College asserted that on or about October 23, 2014, the complainant informed OSSD staff that she did not need a note taker for course 4; however, the College did not provide any documentation to support this assertion.<sup>8</sup>

In a memorandum dated October 23, 2014, OSSD staff noted that the complainant had complained that she was not receiving any approved auxiliary aids and services from the College, including note takers. On November 3, 2014, the complainant and her parents met with College staff, including the Provost and the director, regarding the provision of auxiliary aids and services during the complainant's tenure at the College. The Provost informed OCR that during the meeting, the complainant complained that the College's failure to provide note takers in her classes during the fall 2014 semester adversely affected her academic performance. At the conclusion of the meeting, the complainant medically withdrew from the College for the fall 2014 semester. The Provost and director informed OCR that the College did not contemplate providing any compensatory services or academic adjustments to the complainant to address the time she did not have note takers during the fall 2014 semester.

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<sup>4</sup> According to the manufacturer website, a Connectline microphone is a discreet, clip-on microphone that connects wirelessly to a streamer (an accessory for hearing aids that utilizes Bluetooth technology) that lets users enjoy clear and private one-to-one communication in challenging listening environments.

<sup>5</sup> By signing the Accommodations Agreement Form, the complainant agreed that the accommodations listed therein were satisfactory; acknowledged that she was responsible for delivering accommodations letters to her professors and discussing accommodations with them; and confirmed that she understood that if she encountered any problems with the implementation of her accommodations, she should notify the Director immediately.

<sup>6</sup> The complainant did not specify the course in which she was provided a note taker.

<sup>7</sup> The College stated that the Student was initially assigned a note taker for course 2 on October 2, 2014; however, on October 6, 2014, the note taker informed the College that she could not fulfill the obligation.

<sup>8</sup> OCR asked the complainant to confirm whether this was accurate; the complainant did not respond.

Based on the foregoing, OCR determined that the College did not provide any note takers for courses 1-3 until September 22, October 17 and October 23, respectively. Additionally, the College did not provide a note taker for course 4 prior to allegedly receiving notice from the complainant on or about October 23, 2014, that she did not require a note taker for course 4. On July 10, 2015, the College agreed to implement the enclosed resolution agreement, which addresses this compliance concern.

With respect to Allegation 1(b), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with Kurzweil Software. The complainant subsequently acknowledged to OCR that the College provided Kurzweil Software; but alleged that she could not use the software because it required use of headphones, which she could not wear because she wore a hearing aid.

The College informed OCR that it provided the complainant with Kurzweil Software. The College informed OCR that the Kurzweil Software was only for the complainant's examinations, although this was not stated in the Accommodations Agreement Form. The College explained that the complainant had previously used the Kurzweil Software only for her exams. The complainant did not further clarify her allegation regarding the Kurzweil Software, and did not respond to OCR's requests for clarification. The College informed OCR that the complainant did not take any examinations during the fall 2014 semester before she withdrew on November 3, 2014.<sup>9</sup> OCR did not find any evidence that the complainant notified the director or anyone else at the College of any problem with the implementation or effectiveness of this particular auxiliary aid, or of her alleged inability to use it.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by failing to provide her with Kurzweil Software during the fall 2014 semester. Further, OCR determined that there was insufficient evidence to substantiate that the complainant ever advised College officials that the Kurzweil Software was not an effective auxiliary aid. Accordingly, OCR will take no further action with respect to Allegation 1(b).

With respect to Allegation 1(c), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with books on tape. Specifically, the complainant alleged that the College only gave her one book on tape, even though she needed at least five that semester. The College informed OCR that the complainant never requested, nor received as an approved accommodation, books on tape. Books on tape were not an approved accommodation pursuant to the Accommodations Agreement Form dated September 25, 2014. Rather, the College confirmed that it approved e-texts as an auxiliary aid for the Student for and prior to the fall 2014 semester. Accordingly, OCR investigated whether the College provided e-texts to the complainant during the fall 2014 semester.

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<sup>9</sup> The director stated that the complainant did not sit for her Foundations of Reading examination, scheduled for September 30, 2014, but did not know why the complainant did not take the exam. The College also informed OCR that there were weekly quizzes and a midterm examination on October 23, 2014, in course 4; however, the complainant did not coordinate taking these quizzes or examination in the OSSD, as a student must do in order to use Kurzweil Software for the quiz or examination. The complainant was aware of this procedure, as she had used this auxiliary aid in prior semesters.

OCR determined that the director sent an email to the complainant on July 31, 2014, asking for the complainant's course schedule for the fall 2014 semester, so that OSSD could begin acquiring any necessary e-texts. The complainant provided her course schedule later that afternoon. The College informed OCR that the complainant was provided e-texts for all her classes for the fall 2014 semester.<sup>10</sup> The director informed OCR that her practice is to have students sign an "E-Text Agreement" once they receive an e-text from OSSD;<sup>11</sup> the complainant signed E-Text Agreements for her texts for courses 1, 2 and 4. The complainant did not complete any E-Text Agreement for course 3; however, the director explained that this was an oversight, and provided other documentation to OCR supporting that the necessary e-text was provided for course 3.

Based on the above, OCR determined that there was insufficient evidence to substantiate that books on tape was an approved auxiliary aid for the complainant as she alleged. Further, OCR determined that there was insufficient evidence to substantiate that the College failed to provide the approved auxiliary aid of e-texts. Accordingly, OCR will take no further action with respect to Allegation 1(c).

With respect to Allegation 1(d), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with a Connectline System. The College informed OCR that at the beginning of the fall 2014 semester, it provided the complainant with Wilson earphones and an amplifier; however, on September 11, 2014, the complainant informed the College that the devices were not helpful and returned the equipment. On or about September 18, 2014, the complainant informed the College's assistive technologist that a Connectline System might be helpful to her. Therefore, on the complainant's Accommodations Agreement Form, dated September 25, 2014, the director noted that the complainant's hearing needs were being evaluated and that the provision of hearing technology was to be determined, including possible provision of "Connectline."

The director informed OCR that she called the Connectline manufacturer, who recommended that any Connectline System be ordered and supplied by the complainant's audiologist. The director then spoke with the complainant's audiologist, with the complainant's permission, who said he would order a Connectline System for the complainant. The director stated that the complainant informed her on October 9, 2014, that she received the Connectline System from her audiologist, but that she wanted an additional device from the College in case a professor broke the one supplied by her audiologist. The director stated that upon receipt of the request, she looked into whether the complainant's request for an additional Connectline was reasonable.

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<sup>10</sup> Specifically, the College stated that e-texts for *Major Problems in American History* and *The Enduring Vision, A History of the American People* were provided for course 1 on September 4, 2014; *Principles and Practice of Teaching Reading and Reading without Nonsense* were provided for course 2 on September 3 and 4, 2014, respectively. The College further stated that an e-text for *Beowulf* was provided for course 3 on September 4, 2014, and that *The Canterbury Tales* and *The Tempest* were available to the complainant as Kindle books. The College also stated that the e-text necessary for course 4 was available to all students directly from the publisher; however the College also provided the e-text to the complainant on September 25, 2014, the date the Accommodations Agreement Form was signed.

<sup>11</sup> Under the agreement, students acknowledge that they submitted proof that they purchased the textbook for which OSSD provided an e-text in order to comply with copyright law, and that they will return the e-text to the OSSD at the end of the semester.

The director informed OCR that she spoke with the complainant again on October 16, 2014, who told her that while the Connectline System was helpful to hear her professors, she was unable to hear other students during discussions.<sup>12</sup>

As set forth above, on November 3, 2014, the complainant and her parents met with the Provost, Assistant to the President, Assistant Vice President for Academic Affairs (the assistant vice president) and the director. During the meeting, the complainant reported that she was pleased with the Connectline System she obtained from her audiologist's office, but again requested that the College provide a second one in case the first broke. The College stated that even though the complainant withdrew on November 3, 2014, the College nevertheless purchased two Connectline Systems for the complainant's use for the spring 2015 semester. OCR confirmed that the College purchased the Connectline Systems and that College notified the complainant's mother on January 13, 2015, that these were available for the spring 2015 semester.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by failing to provide her with access to a Connectline System during the fall 2014 semester. Accordingly, OCR will take no further action with respect to Allegation 1(d).

With respect to Allegation 2, the complainant alleged that the College discriminated against her, on the basis of her disability, by denying her request for CART services<sup>13</sup> as a necessary auxiliary aid. Specifically, the complainant alleged that on November 10, 2014, after she withdrew for the fall 2014 semester, she left a voicemail message for the Provost, in which she stated that she was not able to hear comments and questions of her classmates on the Connectline System, and requested a CART system for the spring 2015 semester. The complainant alleged that the College did not respond to her request until on or about December 31, 2014, when the assistant vice president questioned whether CART services would be an effective accommodation in light of the complainant's dyslexia. The complainant stated that the assistant vice president later claimed that he called the complainant's doctor about the request and the doctor did not get back to him; the complainant alleged that this was not true.

The OSSD's "Policies and Procedures" (the policy) establishes how students should request academic adjustments and auxiliary aids and services. The policy states that, among other requirements, students seeking academic adjustments and/or auxiliary aids and services are to submit documentation to the director that is current; specifies the disability as diagnosed;

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<sup>12</sup> On October 20, 2014, the Director contacted a colleague at another SUNY institution, the Coordinator of Access and Equity Services at Tompkins Cortland Community College (TCCC coordinator), to discuss possible alternatives. On or about October 20, 2014, the TCCC coordinator suggested that the complainant move around the room to see if she could hear better from certain locations. The TCCC coordinator further suggested that the Student ask professors to repeat what a student said, or turn and face the student speaking. The College informed OCR that this information was not communicated to the complainant prior to her withdrawal on November 3, 2014. Any concern regarding the College's failure to promptly convey this information to the complainant will be addressed by OCR's resolution of Allegation 3, discussed below.

<sup>13</sup> The National Court Reports Association describes CART services as "the instant translation of the spoken word into English text using a stenotype machine, notebook computer and realtime software." The text produced by the CART service, which can be provided on location or remotely, can be displayed on an individual's computer monitor, projected onto a screen, combined with a video presentation to appear as captions, or otherwise made available using other transmission and display systems.

describes the specific suggested reasonable academic accommodations and/or auxiliary aids/services; and is written on the letterhead of a professional qualified to evaluate the student's disability.

The Provost informed OCR that he was not aware of receiving a voicemail message from the complainant on or about November 10, 2014, regarding CART services. Rather, the Provost stated that on or about December 4, 2014, the complainant called him and requested CART services; and the Provost asked the assistant vice president to look into the request. The assistant vice president stated he worked with the director to learn more about whether CART services would be an appropriate aid for the complainant. The director spoke with the Director of the New York State Disabilities Advocacy Association and Network, who advised that the CART system would not be helpful to the complainant because of her dyslexia. The assistant vice president stated that he discussed the matter further with the complainant's mother on December 30, 2014, who stated that she did not know much about CART services and that it was the College's responsibility to learn more about it. On or about January 5, 2015, after obtaining the necessary authorization, the assistant vice president spoke with the complainant's audiologist, who was not that knowledgeable about CART, but referred him to the Center for Hearing and Communication (the CHC). The assistant vice president stated that he spoke with the Director of Audiology and Communication at the CHC, who advised him that she did not believe CART services were appropriate for a student with dyslexia and hearing loss in one ear. The assistant vice president stated that he relayed this information to the complainant's mother on January 7, 2015, before the start of the spring 2015 semester; and offered the complainant and her mother an opportunity to provide documentation from a licensed physician to support the request for CART services as an effective auxiliary aid. The complainant did not submit any such medical documentation to the College.

Based on the foregoing, OCR determined that the complainant did not follow the College's procedures for requesting CART services as an auxiliary aid; specifically, she did not provide medical documentation to substantiate the need for CART services. OCR determined that the College nevertheless consulted with medical professionals in the field of audiology to determine whether a CART system would be an effective auxiliary aid for the complainant, and determined that it would not. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by denying her request for CART services as a necessary auxiliary aid. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to complaints she and her mother made regarding the College's alleged failure to provide approved and/or necessary auxiliary aids and services during the fall 2014 semester. Specifically, the complainant alleged that during the meeting on November 3, 2014, she stated that she was not receiving "any accommodations," and was therefore failing her classes, when she previously had a 4.0 grade point average. The complainant alleged that the College's only suggested course of action was for her to medically withdraw from the fall 2014 semester. The complainant further alleged that she and her mother contacted College personnel about the College's alleged failure to provide

approved and/or necessary auxiliary aids and services, and personnel either failed to respond to the inquiries or claimed they were obtaining the aid/service but did not do so.<sup>14</sup>

The regulation implementing Section 504, at 34 C.F.R § 104.7(b), requires that a recipient adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504 and its implementing regulation.<sup>15</sup>

Pursuant to the College's "Americans with Disabilities Act Grievance Procedure" (the grievance procedure), students may raise a disability-related complaint informally with the director, and/or file a formal complaint in writing with the director within a reasonable timeframe. Complaints against the director or OSSD staff member should be filed with the Provost.

The complainant did not file any formal, written complaint with the Provost or the director pursuant to the grievance procedure; however, as set forth above, OCR determined that on or about October 23, 2014, the complainant complained to OSSD staff that she was not receiving any approved auxiliary aids or services, and reiterated her concerns at meeting with her parents, the Provost, assistant to the President, assistant vice president and the director on November 3, 2014. OCR further determined that the complainant stated that the failure to provide these services adversely affected her academic performance during the fall 2014 semester.

OCR determined that the Provost designated the assistant vice president to address the concerns the complainant raised during the meeting on November 3, 2014. OCR determined that towards the end of the meeting, the complainant medically withdrew from the College for the fall 2014 semester. The College refunded the complainant for the tuition and fees she incurred for the fall 2014 semester; however, OCR determined that the College did not otherwise investigate the complainant's complaint.<sup>16</sup>

Based on the foregoing, OCR determined that the College did not respond promptly and equitably to the concerns the complainant raised on October 23 and November 3, 2014, regarding the College's alleged failure to provide approved and/or necessary auxiliary aids and services. On July 10, 2015, the College agreed to implement the enclosed resolution agreement, which addresses this compliance concern.

OCR will monitor implementation of the resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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

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<sup>14</sup> OCR asked the complainant to specify to whom she complained and when, but the complainant did not provide this information.

<sup>15</sup> The regulation implementing the ADA, at 28 C.F.R § 35.107, has a similar requirement.

<sup>16</sup> As stated above regarding Allegation 2, the assistant vice president looked into the appropriateness of CART services for the complainant for the spring 2015 semester. However, he did not otherwise address the complainant's concerns.

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, 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact David Krieger, Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov); or Michael Goldberg, Senior Compliance Team Investigator, at (646) 428-3817 or [michael.goldberg@ed.gov](mailto:michael.goldberg@ed.gov).

Very truly yours,

Timothy C.J. Blanchard

Cc: XXXX

Encl.