

July 10, 2017

Varinya Sheppard  
President  
St. Elizabeth College of Nursing  
2215 Genesee Street  
Utica, New York 13501

Re: Case No. 02-17-2119  
St. Elizabeth College of Nursing

Dear President Sheppard:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against St. Elizabeth College of Nursing (the College). The complainant alleged that the College's XXXXXXXXXXXX Services Coordinator<sup>1</sup> discriminated against her, on the basis of her disabilities, by informing her, on or about January 12, 2017, that the College categorically would not provide the academic adjustments she requested.

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). The College is a recipient of financial assistance from the Department and therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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

The complainant alleged that the College's XXXXXXXXXXXX Services Coordinator (the XXXXXXXXXXXX coordinator) discriminated against her, on the basis of her disabilities, by informing her, on or about January 12, 2017, that the College categorically would not provide the academic adjustments she requested. The complainant informed OCR that on January 12, 2017,

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<sup>1</sup> The College's website indicates that the XXXXXXXXXXXX Services Coordinator is also the XXXX XX XXXXXXXX X XXXXXXXX XXXXXXXXXXXXXXX.

she met with the XXXXXXXXXXXX coordinator as a prospective applicant for the College's nursing program. She stated that during the meeting, she inquired about certain academic adjustments and auxiliary aids, including having tests read aloud to her and textbooks on compact disc (CD). She asserted that the XXXXXXXXXXXX coordinator told her that the College would not provide books on CD because they were not available in that format; and, that the College would not read tests aloud because if a student was unable to read tests, he or she would also be unable to read doctors' notes. The complainant further asserted that she told the XXXXXXXXXXXX coordinator that what she was describing was illegal. She stated that the XXXXXXXXXXXX coordinator asserted that it was legal, and suggested that the complainant remain at the college in which she was then enrolled.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), requires that a recipient make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student.

OCR determined that the College maintains a set of policies entitled, "Disability Services for Reasonable Accommodations." These policies include the XXXXXXXXXXXX coordinator's contact information and information about how to request disability accommodations, the types of documentation required for various disabilities, and the process for determining the appropriate accommodations.

The complainant contacted the College in January 2017 to discuss her interest in applying for its nursing program. She scheduled a meeting with an XXXXXXXXXXXX coordinator (the XXXXXXXXXXXX coordinator) for January 12, 2017. At this meeting, the XXXXXXXXXXXX coordinator reviewed the complainant's transcript, completed a credit transfer worksheet with the complainant, discussed the projected time and costs for obtaining a degree from the College, and described the application process.<sup>2</sup> During the course of this discussion, the complainant inquired about receiving academic adjustments for her disabilities. The XXXXXXXXXXXX coordinator called the XXXXXXXXXXXX coordinator into the meeting to address this question. The complainant described the academic adjustments and auxiliary aids she needed for testing, including extended time, a separate location, a word processor for written exams, a calculator, and to have her exams read aloud to her. She also stated that she needed notetaking accommodations and to have her textbooks on CD.

With respect to obtaining books on CD, the complainant asserted that the XXXXXXXXXXXX coordinator stated that the College could not provide this auxiliary aid because its textbooks are not available on CD; however, the XXXXXXXXXXXX coordinator and XXXXXXXXXXXX coordinator both denied that the XXXXXXXXXXXX coordinator made such a statement. Rather, they asserted that the XXXXXXXXXXXX coordinator stated that she would need to ask the College's textbook representatives about whether the textbooks were available on CD. OCR must often weigh conflicting evidence in light of the facts and circumstances of each case and determine whether the preponderance of the evidence substantiates the allegation. Here, OCR did not find that the complainant's assertion that the XXXXXXXXXXXX coordinator categorically

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<sup>2</sup> During this meeting, the XXXXXXXXXXXX coordinator informed the complainant that her Grade Point Average met the College's requirement for admission to its nursing program.

denied her request to receive textbooks on CD was supported by a preponderance of the evidence. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the XXXXXXXXXXXX coordinator discriminated against her, on the basis of her disabilities, by informing her, on or about January 12, 2017, that the College categorically would not provide textbooks on CD as an auxiliary aid.

With respect to reading exams aloud, the XXXXXXXXXXXX coordinator acknowledged that she informed the complainant that, as a matter of policy, the College did not provide reading exams aloud as an auxiliary aid, because one of the essential skills for nurses is to comprehend the written word. Among other examples, she described nurses' need to read doctors' notes. The complainant objected to the XXXXXXXXXXXX coordinator's explanation, asserting that it was illegal; however, the XXXXXXXXXXXX coordinator referred the complainant to the College's published list of "Essential Skills and Abilities for Nursing Students,"<sup>3</sup> and explained that the College was not required to provide academic adjustments or auxiliary aids that alter an essential component of its program.

Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of the regulation implementing Section 504. A recipient's determination as to what constitutes an essential requirement of its program should be based upon a deliberative process that involves a group of trained, knowledgeable, and experienced people who engage in a rational review of the program and its requirements and consider whether effective alternatives to the requirement exist, which could allow the student with a disability to participate without waiving or lowering essential requirements or fundamentally altering the nature of the program. The decision should be documented, including an explanation of the purposes or objectives of the academic program and how the essential requirement is necessary to achieve those objectives.

The XXXXXXXXXXXX coordinator denied the complainant's request to have exams read aloud as an auxiliary aid without conducting an individualized assessment of her needs or the reasonableness of her request. Moreover, OCR determined that in making its determination that the complainant's request to have exams read aloud as an auxiliary aid would alter an essential component of its program, the College did not engage in the required deliberative process and consider whether effective alternatives to the requirement exist, which could allow a student with a disability to participate without waiving or lowering essential requirements or fundamentally altering the nature of the program. In light of the foregoing, OCR determined there was sufficient evidence to substantiate the complainant's allegation that the XXXXXXXXXXXX coordinator discriminated against her, on the basis of her disabilities, by informing her, on or about January 12, 2017, that the College categorically would not provide reading exams aloud as an auxiliary aid. Therefore, OCR determined that the College violated the regulation implementing Section 504, at 34 C.F.R. § 104.44.

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<sup>3</sup> OCR determined that the College maintains a document entitled "Essential Skills and Abilities for Nursing Students," which it provides to prospective students along with its application packet. This document lists communication as an essential skill, and further lists as an example that nursing students must "comprehend the written and spoken word."

OCR determined that after meeting with the complainant, the XXXXXXXXXXXX coordinator consulted with the College's President regarding the complainant's requests. She further reviewed the College's policies, reviewed the ADA [Americans with Disabilities Act] Compliance Guide for Colleges and Universities, and contacted other nursing colleges to inquire how they accommodate students with disabilities. Through these inquiries, the XXXXXXXXXXXX coordinator learned that other nursing programs distinguish between how they accommodate students in their didactic courses and in their clinical settings; and that, in this manner, they may provide for reading exams aloud to students.

Following her consultations with other nursing programs, on January 16, 2017, the XXXXXXXXXXXX coordinator revised the College's internal policies to include "reader for exams" among the examples it listed in defining "reasonable accommodations."<sup>4</sup> She also obtained a recorder and headphones to allow for reading exams as needed, along with a separate program through Microsoft Word that also allows for reading exams aloud. In addition, on January 25, 2017, the XXXXXXXXXXXX coordinator attended a webinar, lasting 1.25 hours, about accommodating students with disabilities. OCR determined that this webinar focused on developing and implementing policies for requests for reasonable accommodations in light of essential functions needed in the academic setting.<sup>5</sup>

OCR also confirmed that the XXXXXXXXXXXX coordinator and XXXXXXXXXXXX coordinator both suggested that the complainant complete her prerequisites at the college in which she was enrolled at the time. Although the complainant asserted that this recommendation was in response to her inquiry about academic adjustments and auxiliary aids, the XXXXXXXXXXXX coordinator and XXXXXXXXXXXX coordinator both denied this and said that they made the suggestion without regard to the complainant's disabilities or requests for academic adjustments. The XXXXXXXXXXXX coordinator explained that the College often recommends that prospective students complete their prerequisites, such as Anatomy and Physiology 1 and 2, prior to enrolling at the College. She explained that students at the College are in classes from 7:00 a.m. until 4:00 p.m. every day, and that if they have not yet completed the prerequisite courses, they must do so outside of those hours, which overwhelms many students.

On July 7, 2017, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues described above. OCR will monitor the implementation of the resolution agreement.

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.

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<sup>4</sup> OCR determined that the College maintains a set of internal policies that are marked "CONFIDENTIAL – For Internal Use Only." OCR determined that the XXXXXXXXXXXX coordinator updated the internal policies to include "reader for exams" among the list of possible disability accommodations; however, the College did not update any other relevant policies that are publicly available.

<sup>5</sup> The College provided the XXXXXXXXXXXX coordinator's certificate of completion for this webinar. OCR further reviewed the training provider's website to assess the contents of the webinar.

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 individual may file a 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, please contact Aditi Shah, Compliance Team Attorney, at [aditi.shah@ed.gov](mailto:aditi.shah@ed.gov) or (646) 428-3897.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.