

September 18, 2018

Jose Acevedo, M.D., M.B.A.
President
Finger Lakes Health College of Nursing
196 North Street
Geneva, New York 14456

Re: Case No. 02-18-2035
Finger Lakes Health College of Nursing

Dear President Acevedo:

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 the Finger Lakes Health College of Nursing (the College). The complainant alleged that the College discriminated against her, on the basis of her disability, by refusing to provide her with a proctor to read examination questions to her during the XXXX XXXX semester, and instead providing her with a screen reader application that did not function properly.

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. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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. 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 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. At the postsecondary level, it is the student's responsibility

to disclose a disabling condition and to request academic adjustments and/or auxiliary aids/services in accordance with the recipient's procedures for doing so.

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

OCR determined that the College's process for requesting and obtaining academic adjustments and auxiliary aids/services, which is available online, provides that students seeking academic adjustments and/or auxiliary aids/services must complete an accommodation request form and submit documentation of the disability and need for the requested academic adjustments and/or auxiliary aids/services to the College's Student Services Coordinator (the coordinator).¹

The complainant began the College's XXXXXXXXXXXX XXXXX program (the program) in XXXX XXXX.² At that time, the complainant submitted to the coordinator documentation that included an "assessment of the presence and extent of XXXXXXXXXXXXXXXXXXXX and XXXXXXX XXXXXXX XXXXXXXXXX that might affect [the complainant's] XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX," conducted in XXXXXXXXXXX XXXX (the evaluation). The evaluation noted that in high school, the complainant was classified as XXXXXXXXXXXXXXXXXXXX and received "accommodations includ[ing] XXXXXXXXXXXXXXXXXXXX XXXX XXXXXXXXXXX XXXXX XXX XXXXX XXXXXXX XXXXXXXXXX, XXXXXXX XX X XXXXXXXXXXXXXXXXXXXX, having test materials read to her, XXX XXXXXXXXXXXXXXXXXXXX." The evaluation concluded that the complainant "meets the criteria for multiple XXXXXXXXXXXXXXXXXXXXXXXXXXXX and she should continue to be granted the accommodations present since her secondary school career." Based on this recommendation in the evaluation, the College approved the following testing modifications for the complainant: (i) "XXXX XXXXX XXXX XXX XXXX XXXX"; (ii) "XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX"; and, (iii) a "[r]eader for each exam."

During academic year XXXX-XXXX, program course examinations were administered in paper and pencil format; therefore, the College provided the complainant with a live reader for all of her course examinations. In XXXX XXXX, the College began administering program course examinations by computer, using SofTest by ExamSoft software; however, the College's screen reader application was not compatible with SofTest, so the College continued to provide the complainant with a live reader for her course examinations during academic year XXXX-XXXX.

Prior to the beginning of academic year XXXX-XXXX, the College replaced SofTest with Exemplify software, also by ExamSoft, which was purportedly compatible with the College's screen reader application. In XXXX XXXX, the College also began administering

¹ The process states that the student must also meet with the College's Dean of the Nursing program; however, College staff informed OCR that this is not required in practice.

² The complainant was XXXXXXXXXXX XXXX the program following the XXXX XXXX semester, but XXXXXXXXXXXXXXXXXXXX for the XXXX XXXX semester.

XXXXXXXX practice examinations using software developed by XXXXXX XXXXXXXX, which was purportedly compatible with the College’s screen reader application.³

Prior to the start of academic year XXXX-XXXX, the College’s XXXXXXXX XXXXXXXX XXXXXXXXXX (the assistant) notified the complainant that the College would continue to provide her with the same testing modifications she received in prior semesters; however, with respect to a “reader for each exam,” the College would provide her with the screen reader application instead of a live reader. The complainant did not contest this change at that time, and did not provide any documentation to the College at any time indicating that she needed a live reader as opposed to a screen reader application.

The complainant alleged that the College discriminated against her, on the basis of her disability, by refusing to provide her with a proctor to read examination questions to her during the XXXX XXXX semester, and instead provided her with a screen reader application that did not function properly. The complainant was enrolled in XX XXX during the XXXX XXXX semester,⁴ and was required to take the following examinations: (i) XXXXXX XX XXXXXXX XXXXXXX XXXX X XXXX XX XXXXXXXXXX XXX XXXX (exam 1); (ii) XXXXXX XX XXXXXXX XXXXXXX XXXX XX XXXXXXXXXX XXX XXXX (exam 2); (iii) XXXXXX XX XXXXXXX XXXXXXX XXXX X XXXX XX XXXXXXX XX XXXX (exam 3); (iv) XXXXXX XX XXXXXXXXXX XXXX XXXX X XXXX XX XXXXXXX XXX XXXX (exam 4); (v) XXXXXX XX XXXXXXXXXX XXXX XXXX X XXXX XX XXXXXXXXXX XX XXXX (exam 5); (vi) XXXXXX XX XXXXXXXXXX XXXX XX XXXXXXXXXX XXX XXXX (exam 6); (vii) XXXXXX XX XXXXXXXXXX XXXX XXXX X XXXX XX XXXXXXXXXX XXX XXXX (exam 7); and (viii) XXXXXX XX XXXXXXXXXX XXXX XXXX X XXXX XX XXXXXXXXXX XXX XXXX (exam 8). The complainant acknowledged that the College provided her with either the screen reader application or a live reader for each of these examinations, but alleged that the screen reader application did not function properly.

OCR determined that on XXXXXXXXXXXXXXXXXXXX, the complainant attempted to take exam 1 using the screen reader application, but the application would not launch properly. The College therefore provided the complainant with a live reader for exam 1, and the complainant received a score of XX.

On XXXXXXXXXXXXXXXXXXXX, the complainant took exam 2 using the screen reader application and received a score of XX. By electronic mail message (email) to the assistant dated XXXXXXXXXXXXXXXXXXXX, the complainant reported that while taking exam 2, the screen reader application read unimportant information such as time remaining, question number and

³ The College informed OCR that prior to acquiring the screen reader application, the College’s XXXXXXXX XXXXXXXXXX XXXXXXXXXX and Information Services personnel tested the application on College computers, including computers used by students requiring testing accommodations. The College informed OCR that staff experienced no issues with the application during the testing. The College informed OCR that after it acquired the screen reader application, the Information Services department reimaged the College’s computers; the XXXXXXXX XXXXXXXXXX XXXXXXXXXX and Information Services personnel conducted several additional tests of the application on computers used by students requiring testing accommodations following the reimaging, and again experienced no issues with the application.

⁴ The complainant was also enrolled in XX XXXX, which was the XXXXXXXXXX section of XX XXX, during the XXXX XXXX semester. XX XXXX has no examinations and is graded pass/fail.

examination name; frequently mispronounced words; and, was unable to repeat a word without re-reading the entire question. The assistant responded by email dated XXXXXXXXXXXXXXXX, in which she advised the complainant that the College would look into the matter and resolve any issues promptly.

Later on XXXXXXXXXXXXXXXX, the complainant took exam 3 using the screen reader application and received a score of XX. Later that day, the complainant emailed the assistant and stated that she experienced the same issues she reported in her prior email regarding exam 2.⁵ The assistant informed the College's Dean of XXX XXXXXXX XXXXXXX (the dean) of the concerns that the complainant raised in her emails of XXXXXXXXXXX and XXXXXXX, regarding exams 2 and 3; and on XXXXXXXXXXXXXXXX, the dean informed the complainant that the College would investigate the matter.

Shortly thereafter, in early XXXXXXXXXXXXXXXX, a representative of XXXXXXX XXXXXXX notified the College that the software used to administer XXXXXXX practice examinations was not compatible with the College's screen reader application. The dean informed OCR that she originally thought that the complainant's issues with the screen reader application pertained only to XXXXXXX examinations. Accordingly, the dean informed the complainant on XXXXXXXXXXXXXXXX, that the College would provide her with a live reader for all XXXXXXX practice examinations going forward. The College informed OCR that it did not offer the complainant an opportunity to retake exam 2 because the complainant did not ask to retake exam 2, and because a student's grades on the two XXXXXXX practice examinations together make up only two percent of the student's total grade for the fall semester.

On XXXXXXXXXXXXXXXX, the complainant took exam 4 using the screen reader application and received a score of XX. Later that day, the complainant sent an email to the assistant in which she stated that she experienced the same issues she reported in her prior emails regarding exams 2 and 3; that the application would not read the entire examination question; the application would start reading from the middle of the question and not from the beginning; the application would start from the beginning of an examination question and then stop in the middle of a sentence; and, if she accidentally moved the mouse in the wrong direction, the application would restart from the beginning of the question rather than at the word or words she wanted re-read. The assistant directed the complainant to make an appointment with the dean to discuss her concerns.

The complainant met with the dean on XXXXXXXXXXXXXXXX. During the meeting, the complainant reiterated the issues regarding the screen reader application she had previously described in her emails to the assistant, and asked that the College provide her with a live reader for examinations.⁶ The dean told the complainant that she would look into the matter, and

⁵ The complainant also asked if the College could provide her with recordings of her remaining examinations on compact disc (CD). The assistant responded that this was not possible. The College informed OCR that ExamSoft software generates examination questions randomly each time it is used to administer an examination; therefore, the College had no way to match the ordering of questions on a recording to the ordering of questions on a computer examination.

⁶ The complainant asserted to OCR that when she met with the dean, she overheard the assistant and coordinator commenting that they could not believe that the complainant was complaining after all they had done for her, and

subsequently directed the assistant to investigate the complainant's reported issues with the screen reader application on course examinations.

The College advised OCR that sometime between XXXXXXXXXXXXXXXX, and XXXXXXXXXXXXXXXX, the assistant, together with Information Services (IS) personnel, tested the screen reader application on several computers on campus and did not experience any of the issues the complainant had reported; however, the College was unable to provide any documentation to OCR regarding the testing of the screen reader application.⁷ The assistant reported the findings to the dean, and stated to the dean that no individual other than the complainant had raised any issues with her regarding the screen reader application.⁸ Based on the assistant's findings, the dean informed the complainant sometime between XXXXXXXXXXXXXXXX, and XXXXXXXXXXXXXXXX, that the College would continue to provide her with the screen reader application for course examinations. The complainant denied that the dean informed her of this decision.

On XXXXXXXXXXXXXXXX, the complainant took exam 5 using the screen reader application and received a score of XX. Later that day, the complainant emailed the assistant and stated that during the administration of exam 5, the application began reading from the middle of a question and also stopped reading in the middle of a question. The assistant promptly forwarded the email to the dean, the course professor and the coordinator. In her email, the assistant stated that the complainant did not report any problems with the screen reader application during the administration of the examination; and, that no other student had raised any issue regarding the screen reader application. The College informed OCR that it did not respond to the complainant's email dated XXXXXXXXXXXXXXXX, because the complainant had previously raised the same concerns and the College had considered these concerns in its investigation and testing of the application.

On XXXXXXXXXXXXXXXX, the complainant took exam 6, a XXXXXXXX practice examination. The College provided the complainant with a live reader for exam 6 because, as stated above, the screen reader application was not compatible with XXXXXXXX practice examinations. The complainant did not raise any issues with the College regarding exam 6 and received a score of XX.

On XXXXXXXXXXXXXXXX, the complainant took exam 7 using the screen reader application. During the administration of exam 7, the complainant reported to the assistant that the screen reader application stopped working. The assistant promptly retrieved IS personnel to

they were "sick and tired of accommodating students with disabilities." The coordinator and assistant denied this, and the complainant did not identify any witnesses to this alleged incident.

⁷ They stated that they only detected that if a user repeatedly clicked on the mouse, the screen reader application would freeze, which they suspected might be the cause of the complainant's problems, and advised the complainant accordingly.

⁸ The College began providing three other students with the screen reader application instead of live readers at the start of academic year XXXX-XXXX (students A, B and C). The assistant informed OCR that after each examination, she would verify with the complainant and students A, B and C whether there were any problems with their examinations. The assistant asserted to OCR that no student other than the complainant reported to her or to IS personnel any issues with the screen reader application, and stated that she was not aware of any other student reporting any problems with the application to any other staff member.

fix the problem, and also arranged for a live reader in the event IS personnel could not promptly fix the problem. IS personnel fixed the problem quickly and the complainant finished her examination using the screen reader application and received a score of XX.⁹ By email dated XXXXXXXXXXXXXXXXXXXX, the complainant complained to the dean that during the administration of exam 7, the screen reader application took almost 40 minutes to launch, was unable to read complete sentences and frequently mispronounced words. The dean responded by email dated XXXXXXXXXXXXXXXXXXXX, in which the dean stated that the launch issue was due to a software upgrade, and that the College had arranged for a live reader in the event the screen reader application failed to function for the duration of her examination. The dean further informed the complainant that the College would continue to accommodate her need, as stated in the evaluation, for “test materials read to her” through the screen reader application. The College informed OCR that it did not address any other concerns raised in the complainant’s email dated XXXXXXXXXXXXXXXXXXXX, because the complainant had previously raised the same concerns and the concerns were addressed in the College’s investigation and testing of the application.

On XXXXXXXXXXXXXXXXXXXX, the complainant took exam 8 and received a score of XX. The complainant reported no issues with the screen reader application with respect to exam 8. The complainant received a XX for XX XXX and was XXXXXXXXXXX XXXX the XXXXXXXX for XXXXXXXX to XXXX the XXXXXXXXXXX XX XXXXXXXX, in accordance with College policy.¹⁰ The College informed OCR that the complainant’s performance on her XXXX XXXX examinations was consistent with her performance on examinations taken during her other semesters in the program, when she was provided with a live reader.¹¹

OCR interviewed students A and B regarding their experience with the screen reader application and the College’s response to reports they made of issues experienced, if any.¹² Student A informed OCR that she did not use the screen reader application for any examination during academic year XXXX-XXXX.¹³ Student B asserted to OCR that she complained to the dean that the screen reader application was unable to read examination questions on the first exam she took with the screen reader; and, that the screen reader application took a long time to launch during her second exam. Student B asserted to OCR that she also experienced the following problems with the screen reader application: (1) the application mispronounced words; (2) the application did not read complete sentences; (3) the application would start from the beginning of an examination question and then stop in the middle of a sentence; (4) the application did not allow her to repeat a word without re-reading the entire question; and, (5) if the mouse was

⁹ The College informed OCR that beginning on XXXXXXXXXXXXXXXXXXXX, the assistant and IS personnel conducted periodic practice tests on computers used by students receiving testing modifications, to ensure that there were no issues with the screen reader application.

¹⁰ Pursuant to the College policy, the complainant is XXXXXXXXXXX to XXXXXXXX in the XXXXXXXX, as this was XXX XXXXXXX XXXXXXXXXXXX for XXXXXXXX to XXXX the XXXXXXXXXXX XX XXXXXXXX.

¹¹ The complainant received the following grades in the following courses that had examinations during the XXXX XXXX semester: X inXX XXX; and X in XX XXX. The complainant re-took XX XXX during the XXXX XXXX semester, and received a X. The complainant took XX XXX during the XXXXXXX XXXX semester and received a X.

¹² OCR attempted to also interview student C, but student C did not respond.

¹³ Student A informed OCR that she took most of her examinations XX XXXX; and, any examinations taken at the College were administered in XXX XXXXXXXXXXXX, where an instructor read examination questions to her.

accidentally moved in the wrong direction, the application would restart from the beginning of the examination question rather than at the word or words she wanted re-read. Student B asserted to OCR that she reported these issues to the dean, and the dean told her she would look into her reported issues. Student B asserted that by the time that she took her third exam all of the issues she experienced were resolved, except that the screen reader application continued to not read complete sentences. Student B stated that she stopped complaining about this issue after taking her third exam because the issue remained unaddressed. Student B informed OCR that the dean notified her during winter recess that she could retake her first examination and she retook it.

On September 10, 2018, the College signed the enclosed resolution agreement to resolve the complaint allegation. 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. 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 questions, please contact Tiffany Lyttle, Compliance Team Attorney, at (646) 428-3754 or tiffany.lyttle@ed.gov; or Gary Kiang, Senior Compliance Team Attorney, at (646) 428-3761 or gary.kiang@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Stephanie Caffera, Esq.

Encl.