

RESOLUTION AGREEMENT

State University of New York, Empire State College Case No. 02-18-2252

In order to resolve Case No. 02-18-2252, the State University of New York, Empire State College (the College) assures the U.S. Department of Education, Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of 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, and Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35:

Action Item 1: Complaint Investigation

By January 1, 2019, the College will complete an investigation of the complainant's complaints, made in December 2017 and on June 6, 2018, that the professor discriminated and retaliated for her having requested to use her approved academic adjustment of extended time, by refusing to provide her with instruction and written feedback in the XXXXXXXXXXXXXXXX Business course during the fall 2018 semester, and giving her failing grades. The investigation of the complainant's complaint will involve, at a minimum, the following: providing the complainant with an opportunity to provide additional information or identify any other witnesses relevant to her complaint; conducting a detailed review of all information previously provided by the complainant; interviewing the professor, and all witnesses, as appropriate; and, making a determination of whether the evidence presented, together with such additional information and witnesses as may be identified or presented, support a finding that retaliation, occurred. The outcome of the investigation will be communicated to the parties in accordance with the College's procedures for investigating complaints under Section 504 and the ADA.

Reporting Requirement: By February 1, 2019, the College will submit to OCR a report documenting the procedures used to conduct its investigation, as well as the outcome of the investigation; proof that notice of the outcome was provided to the complainant and the professor; any interim measures, and/or corrective actions deemed necessary (e.g., discipline, counseling, revision of the complainant's transcript, etc.); and, a timeline for implementation of the corrective actions, if necessary. The College will also provide all documentation obtained relevant to the investigation.

Action Item 2: Training and Complaint Investigations

- A. Pursuant to the schedule provided below, the College will provide training to all College administrators and staff members who are responsible for recognizing and reporting incidents of discrimination on the basis of disability. The training will cover, at a minimum, the (a) what types of conduct constitute discrimination; (b) how staff and administrators are expected to respond to discrimination of which they have knowledge; (c) the responsibility of staff and administrators to report incidents of possible discrimination; and, (d) where, how, and to whom instances of disability discrimination are to be reported. During the trainings,

the College will provide copies of its Section 504/ADA grievance procedures to all attendees, or refer them to their location within the publications they already possess.

- B. Pursuant to the schedule provided below, the College will provide training to its Chief Diversity Officer, and any other College employees or third parties directly involved in receiving, processing, investigating, adjudicating and/or resolving complaints of disability discrimination. The training will include instruction on the College's Section 504/ADA grievance procedures; the College's obligation regarding the investigation of such complaints; and, how to conduct adequate, reliable, and impartial investigations of disability discrimination for those charged with investigative duties.
- C. Training consisting of Action Items 2A and/or 2B, as appropriate, will be provided to the following:
- By 12/31/18: President's & Provost's Council (including the Chief Diversity Officer);
 - By 02/15/19: Dean's/Associate Deans/Program Chairs;
 - By 03/31/19: Financial Aid/Student Accounts/Student Information Center/Student Success and Development Coordinators/Office of Enrollment Management/Student Academic Services/Registrar; and,
 - By 05/01/19, Faculty Mentors (a/k/a Academic Advisors for students)

Reporting Requirements:

- a) By June 15, 2019, the College will provide documentation to OCR demonstrating that it provided training in accordance with Action Item 2 above. The documentation will include, at a minimum, the name(s) and credentials of the trainer(s); the date(s) and time(s) of the training(s); the names and positions/titles of staff in attendance; confirmation of whether all relevant employees have been trained (and if not, how many remain); and, copies of any training materials distributed.
- b) By July 31, 2019, the College will submit documentation to OCR (such as a de-identified tracking report, using unique identifiers in place of student names and/or other personal identifiers) of the College's responses to complaints of discrimination on the basis of disability, made during academic year 2018-2019. The documentation will include, at a minimum: the date the complaint was filed; unique identifiers instead of the names of complainants and respondents (i.e., "Student 1," "Professor 1," etc.); the conduct alleged; information about the individual(s) who received and processed the complaints; interim measures provided, if any; the status of the file at the time of submission to OCR, e.g., the investigation is ongoing, the investigation is suspended due to a request from law enforcement, or the College is assessing discipline to be imposed; the outcome of all completed investigations, and the date that the parties were notified of the outcome; and, the outcome of any disciplinary matters related to the investigations or other remedial measures taken.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement. Upon the College's satisfaction of the commitments made under this Agreement, OCR will close this case.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the College written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This Agreement will become effective immediately upon the signature of the College's representative below.

11/16/18
Date

/s/
Mitchell S. Nesler, Ph.D.
Officer in Charge
State University of New York
Empire State College