

November 26, 2018

Erik J. Bitterbaum, Ph.D.
President
State University of New York, College at Cortland
Miller Building, Room 408
P.O. Box 2000
Cortland, New York 13045

Re: Case No. 02-18-2270
State University of New York, College at Cortland

Dear President Bitterbaum:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against the State University of New York, College at Cortland (the College). The complainant alleged that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the handling of an appeal related to the disciplinary action (Allegation 1); the issuance of a sanction of a XXXXX-year suspension following the appeal (Allegation 2); the handling of a *persona non grata* (PNG) order issued against her on XXXXXXXX XX, XXXX (Allegation 3); and, the requirement that she meet with the Associate Vice President for Student Affairs (associate vice president) prior to making a formal application for readmission to the College (Allegation 4).¹

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 also is responsible for enforcing 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. 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.

¹ OCR has reframed and renumbered the allegations since the issuance of the letter notifying the parties that OCR was opening the complaint for investigation; however, the substance of the allegations is the same.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. The regulation implementing the ADA, at 28 C.F.R. § 35.130(a), contains a similar provision.

The regulation implementing Section 504, at 34 C.F.R. § 104.4(b)(1), specifically states that a recipient, in providing any aid, benefit, or service, may not, on the basis of disability (i) deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service; (ii) afford a qualified individual with a disability an opportunity to participate in or benefit from an aid, benefit or service that is not equal to that afforded others; (iv) provide different or separate aids, benefits, or services to disabled persons; and, (vii) otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by other others receiving an aid, benefit, or service. The regulation implementing the ADA, at 28 C.F.R. § 35.130(b)(1), contains similar provisions.

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

OCR determined that the complainant enrolled as a graduate student at the College in the fall XXXX semester. The complainant was registered with the College's disability services as a student with a disability.²

During the fall XXXX semester, on XXXXXXXX X, XXXX, following a report by a professor that the complainant was harassing her, the College placed the complainant on interim suspension and issued a no contact order prohibiting her from contacting the professor through any means. By letter dated XXXXXXXX X, XXXX, the College proffered disciplinary charges against the complainant for harassment; namely, repeatedly sending unwanted electronic mail messages (emails) to the professor between XXX XXXX and XXXXXXXX XXXX.

At the disciplinary conference with the College's Director of Student Conduct held on XXXXXXXX X, XXXX, the complainant pleaded "in violation" to the charge of harassment. To resolve the disciplinary action, the complainant, agreed to the following as "sanctions" for her conduct: to begin counseling to address her mental health condition, and to voluntarily take a medical leave of absence that became effective on XXXXXXXX X, XXXX.

On XXXXXXXX XX, XXXX, the professor appealed the resolution of the disciplinary action, on the basis that the sanctions imposed were too lenient. In support of her appeal, the professor stated that the complainant's XXXXXXX XXXXXXXXXX told her that the complainant had continued to send him text messages about the professor; and at the professor's request, the XXXXXXXXXX forwarded the recent messages to her. The professor also submitted to the College an email from the XXXXXXXXXX, sent at the professor's request, which, among other things, detailed the XXXXXXXXXX's concerns about the complainant's mental state,

² The complainant's approved academic adjustments and auxiliary aids included extended time on tests, note taking assistance, and a minimally distracting location for tests.

medications, and the causes of her XXXXXXXXXXXX XXXXXXXXXXXX. In addition, the professor forwarded to the College a copy of an email that the complainant had written to the XXXXXXXXXXXX, and highlighted sections that “particularly scare[d]” her; namely, those in which the complainant made comments about “why people XXXX other XXXXXX or XXXXXXXXXXXX.” The professor also forwarded to the College an email from the complainant with the complainant’s references to the professor’s XXXX XXXXXXXX and a XXXXXXXXXXXX of the XXXXXXXXXXXX XXXXXXX XXXXXXX.

On XXXXXXXX XX, XXXX, the College extended the no contact order that had been imposed on XXXXXXXX X, XXXX. The notice of the extension of the contact order also stated that the complainant was not allowed to enter the campus; and that if she had particular concerns regarding her academic or disciplinary status, she could contact one of two designated College administrators. The notice also prohibited the complainant from contacting any other College faculty or staff. The College advised OCR that because the complainant was on a medical leave of absence at the time that the professor filed the appeal on XXXXXXXX XX, XXXX, consistent with its practice, the College held the appeal in abeyance until the complainant communicated that she wished to return to the College, at which time she would be expected to resolve any pending disciplinary matters.

On XXXXXXXX XX, XXXX, a week after the complainant began her medical leave of absence, the complainant was XXXXXXXXXXX for stalking the professor. This XXXXXXX resulted in an additional charge arising from the College’s Code of Student Conduct (the Code), an “A08 violation,” separate from the harassment violation; however, the College did not immediately notify the complainant about this charge during her leave of absence.

On XXXXXXXX XX, XXXX, the XXXX-XXXXXX XXXXXXXXXXXX, the College’s XXXXXXXX, also issued an indefinite PNG order to the complainant at the recommendation of the University police and in accordance with the PNG guidelines. The PNG order issued to the complainant on XXXXXXXX XX, XXXX, stated that the complainant was excluded from all College premises, including facilities and activities that would normally be open to the public; and that if she were found in violation of the order, she would be subject to immediate arrest for criminal trespass.³

Approximately one year and eight months later, on XXXX XX, XXXX, the complainant sent an email to the associate vice president to request that the College remove any holds from her transcript so that she could re-enroll. On XXXX XX, XXXX, the associate vice president responded, stating that in order to remove the holds on the complainant’s transcripts, the College would need to address the “outstanding student conduct matters,” among other issues. The complainant spoke with the associate vice president by telephone on or about XXXX XX and XX, XXXX, after which the associate vice president sent an email to the complainant on XXXX XX, XXXX, to confirm that in order to remove the holds and re-enroll, the complainant would need to address her PNG status, submit paperwork regarding her leave of absence, and resolve outstanding disciplinary matters.

³ The stated reason for the issuance of the PNG letter is “a series of incidents over the past year as reported to University Police.”

On XXXXXXXX XX, XXXX, the College notified the complainant about the A08 violation charge that was also pending against her. On XXXXXXXXX X, XXXX, the complainant sent an email to the associate vice president, stating her intent to resolve the disciplinary matters pending against her so that she could re-enroll.

On XXXXXXXXX XX, XXXX, the Student Conduct Office sent an email to the complainant to notify her, for the first time, about the appeal the professor had filed regarding the resolution of the disciplinary charge filed on XXXXXXXX X, XXXX (notice of appeal). The notice of appeal stated that the College had received a timely appeal of the outcome of the complainant's disciplinary conference held on XXXXXXXX X, XXXX, and that the Level II College Appeals Committee (the appeals committee) would meet to review the relevant materials and respond to the appeal. The notice of appeal further stated that, as part of the appeal process, the complainant could "submit a written statement in support of the original outcome." In addition, the notice of appeal informed the complainant that her written statement was due within three school days from her receipt of the email. OCR determined that the notice of appeal sent to the complainant did not describe the basis for the appeal or refer to any evidence that the professor submitted in support of the appeal.

On XXXXXXXXX XX, XXXX, the complainant timely submitted a written statement in support of her original disciplinary sanction. In her written statement, the complainant requested a reasonable accommodation with respect to the College's discipline policies, such as considering the medical leave of absence that she already had taken in lieu of an additional disciplinary consequence. She also requested that she not be subject to any harsher sanctions and/or disciplinary actions for behavior that was related to her disability. Further, the complainant explained that she had received treatment for her mental health needs and had obtained the appropriate supports to prevent the recurrence of the disability-related behavior that led to the disciplinary charges against her on XXXXXXXX X, XXXX.

In consideration of the appeal, the appeals committee reviewed the records from the underlying disciplinary process in XXXX; the documentation that the professor submitted in support of the appeal; and, the complainant's written response to the appeal. In its determination letter issued on XXXXX XX, XXXX (the appeal determination letter), the appeals committee stated that it considered the professor's appeal on the grounds of new evidence and a disproportionate sanction. The letter further stated that, in light of the new evidence, the appeals committee determined that the frequency and nature of the complainant's unwanted emails to the professor had risen to "a level that was significantly more pervasive and severe"; and, that the complainant's emails about XXXXXXXX other people as an alternative to XXXXXXXX XXXXXXXX was "particularly alarming." In addition, the appeals committee concluded that the complainant's emails, in combination with the complainant's references to the professor's XXXX XXXXXXXX and a XXXXXXXXXX of the professor's XXXXXXX XXXXXXX had caused the professor to fear for her safety. The appeals committee concluded that the initial sanctions, i.e., a restriction of contact and a counseling assessment, were grossly disproportionate to the violations at issue; therefore, the appeals committee suspended the complainant for a period effective XXXXXXXX X, XXXX, until XXX XX, XXXX. The appeals committee also upheld the restriction of contact between the complainant and the professor; and, stated that the PNG order would remain in effect. OCR determined that the appeal determination letter did not

discuss or refer to the complainant's written statement or any changes in her disability-related conditions.⁴

With respect to Allegation 1, the complainant alleged that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the handling of the appeal related to the disciplinary action. Specifically, the complainant alleged that the College discriminated against her, on the basis of her disabilities, by not providing notice to her regarding the basis on which the appeal was filed, so that she had an opportunity to review and defend against new evidence considered in the appeal.

The College asserted that, consistent with the Code, it was not the College's practice to advise a non-appealing party of the basis on which an appeal was filed. OCR reviewed the Code in effect at the time that the College notified the complainant of the appeal, academic year XXXX-XXXX. The Code provided that appeals were limited to four grounds: procedural error, unsupported conclusion, disproportionate sanction, and new evidence; and, that the appeal would be limited to a review of the records from the underlying disciplinary proceeding, except as needed to consider new evidence as a basis.⁵ OCR determined that the Code did not state what, if any, notice must be provided to the non-appealing party in the event of an appeal, whether a non-appealing party was entitled to access to information or documentation about the grounds for appeal, or whether the non-appealing party had the opportunity to contest or defend against an appeal.

OCR determined that during academic year XXXX-XXXX, in addition to the complainant's case, the College processed 12 appeals of disciplinary determinations involving a student as the non-appealing party. None of these other 12 students was registered as a student with a disability. OCR reviewed the appeal notices from 10 of the 12 appeals,⁶ and determined that none of the notices of appeal that the College issued to the non-appealing students included a substantive description of the appeal, or referred to or included copies of any evidence submitted in support of the appeal.⁷

Based on the foregoing, OCR determined that the College proffered a legitimate, nondiscriminatory reason for not providing the complainant with information about the basis for the professor's appeal or a copy of the new evidence that the professor submitted in support of the appeal; namely, its appeal procedures did not require that such information be provided to the non-appealing party. OCR determined that the proffered reason was not a pretext for discrimination on the basis of disability, as the appeal was handled consistent with the appeal procedures outlined in the Code; and, the College provided the complainant with notice that was similar to that given in processing the appeals of 10 other similarly situated students who did not

⁴ Ultimately, on or about XXXXX XX, XXXX, the College dismissed the A08 charge.

⁵ For disciplinary violations for which potential sanctions included suspension and expulsions, the Code designated a Level II College Appeals Committee to consider appeals; all other appeals were assigned to a Level I College Appeals Committee. The two appeals committees differed in terms of who appointed their respective members and who supervised their deliberations. The College informed OCR that the appeal process that each committee followed was the same.

⁶ The College informed OCR that documentation for two of the appeals was unavailable.

⁷ One notice generally identified the grounds for appeal (e.g., disproportionate sanction, new evidence), without further description.

have disabilities. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the handling of the appeal related to the disciplinary action. Therefore, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the issuance of a sanction of a XXXXX-year suspension following the appeal. The complainant asserted that she had submitted a written statement to the appeals committee that explained that her medical leave of absence had allowed her to address her mental health needs and that she had obtained the appropriate supports to prevent a recurrence of her disability-related behavior that had led to her sanctions in XXXXXXXX XXXX. The complainant asserted that the sanction of a XXXXX-year suspension was inappropriate, because the appeals committee's determination letter failed to reflect an "individualized and objective assessment of her disability"; and, that the appeals committee had failed to request and assess the complainant's medical history and to consult with her mental health providers to properly assess the extent to which the complainant currently posed a "direct threat."

The Code stated that, upon review of an appeal, the appeals committee could take one of four actions: affirm the original determination and sanction; affirm and/or modify the finding and modify the sanction; remand the case to the original student conduct body for a new hearing; or, dismiss the case. The appeals committee was required to give deference to the initial disciplinary determinations, and could modify sanctions only if the sanctions were found to be grossly disproportionate to the gravity of the offense. Further, the appeals committee could only remand cases if procedural errors were so substantial as to effectively deny the accused student a fair hearing; and, could dismiss cases only if the underlying determination was arbitrary and capricious. The Code listed a range of 12 available sanctions for a finding of harassment, including expulsion; suspension; loss of privileges; restrictions of contact with the reporting individual; mandated counseling; and, disciplinary probation.⁸

The College advised OCR that the appeals committee increased the complainant's sanction to a XXXXX-year suspension consistent with the Code, because the original sanctions were found to be grossly disproportionate to the gravity of the offense. Specifically, as stated previously, the appeals committee determined that the frequency and nature of the complainant's unwanted emails to the professor had risen to "a level that was significantly more pervasive and severe"; and, that the complainant's emails about XXXXXXXX other people as an alternative to XXXXXXXX XXXXXXXX was "particularly alarming." In addition, the appeals committee concluded that the complainant's emails, in combination with the complainant's references to the professor's XXXX XXXXXXXX and a XXXXXXXXXX of the professor's XXXXXX XXXXXXXX, had caused the professor to fear for her safety.

Although the complainant was registered with the College's disability services as a student with a disability, she had no approved accommodations with respect to the application of the Code or

⁸ Further, OCR determined that the Code states that if the disciplinary process results in a suspension or expulsion of a student who has withdrawn, the disciplinary sanctions shall supersede the student's withdrawal.

the College's disciplinary policies. The regulations implementing Section 504 and the ADA do not otherwise require a postsecondary institution to consider a student's disability in determining a sanction for a disciplinary infraction. Further, these regulations do not require a postsecondary institution to determine if a student's behavior was related to a disability, or impose a more lenient sanction upon a disabled student if the behavior was related to a student's disability.

OCR determined that during academic year XXXX-XXXX, 11 students in addition to the complainant were found responsible for harassment under the Code, 7 of whom engaged in unwanted communication with other individuals or threatening behavior.⁹ Of these 7 students, 2 students without disabilities each received suspensions of 1.5 years¹⁰; 1 student with a disability was suspended for 4 months, and the other 4 students (1 of whom had a disability) received lesser sanctions, including deferred suspension,¹¹ disciplinary probation,¹² a counseling assessment, a letter of reprimand with completion of educational training, and a requirement to write a letter of apology or other such reflective writing.

Based on the foregoing, OCR determined that the College proffered a legitimate, nondiscriminatory reason for suspending the complainant for XXXXX years; namely, that the new evidence that the professor submitted in support of her appeal demonstrated an elevated severity in the nature of the complainant's conduct, such that the appeals committee determined the original sanction to be grossly disproportionate. OCR determined that the proffered reason was not a pretext for discrimination on the basis of disability, as the appeals committee acted in accordance with the appeal guidelines set forth in the Code in its consideration of the sanction; the documentation that the appeals committee reviewed corroborated its findings; the sanction fell within the range of possible penalties for students found responsible for harassment; and, the College did not have a pattern of treating similarly situated students with disabilities harshly or similarly situated non-disabled students leniently. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the issuance of a sanction of a XXXXX year suspension following the appeal. Therefore, OCR will take no further action with respect to Allegation 2.

⁹ The unwanted communication took place through text messages and social media. The threatening behavior consisted of: a student following female students as they were walking home, and calling them "sluts" and "whores," making the students fearful for their personal safety; while under the influence, entering multiple residents' rooms in a residence hall without permission, and attempting to grab another individual; and, threatening to harm a former roommate.

¹⁰ The duration of these two students' suspensions was less than the duration of the complainant's suspension; however, OCR determined that the conduct in which the students engaged in was less severe than the conduct in which the complainant was found to have engaged.

¹¹ The Code defined deferred suspension as follows: "definite period of observation and review. If a student is again found responsible for any further College policy violations including failure to complete previously imposed sanctions or adhere to previously imposed conditions, the student will automatically be suspended for a minimum of one semester."

¹² The Code defined disciplinary probation as follows: "A notice to the student that her/his actions are of a serious nature within the College community. This sanction shall be primarily used in cases of serious or consistent policy violations. Probation shall be for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to be violating any College policies during the probationary period. Any violation committed during the probationary period will result in a review of the student's status at SUNY Cortland."

With respect to Allegation 3, the complainant alleged that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the handling of a PNG order issued against her on XXXXXXXX XX, XXXX. The complainant asserted to OCR that the College issued the PNG order on XXXXXXXX XX, XXXX, in response to a manifestation of her mental illness, without providing her with due process rights regarding notice, hearing, and the right to appeal the issuance of the PNG order; and, without conducting an “individualized assessment.” The complainant stated that, per College policies, although she was on a medical leave of absence as of XXXXXXXX X, XXXX, she was still considered a student at the College and entitled to due process rights. Further, the complainant alleged that the appeals committee discriminated against her, on the basis of her disabilities, in XXXXX XXXX, by determining that she would continue to be subject to the PNG without conducting an individualized assessment regarding her ability to safely participate in the College’s programs, activities and events, or the extent to which she might constitute “a direct threat.”

As stated above, on XXXXXXXX XX, XXXX, the XXXX-XXXXXX XXXXXXXXXX, the College’s XXXXXXXX, issued an indefinite PNG order to the complainant at the recommendation of the University police and in accordance with the PNG guidelines, following the complainant’s XXXXXXXX for stalking the professor. Further, OCR determined that the appeal determination letter issued by the appeals committee on XXXXX XX, XXXX, included the appeals committee’s “decision” to uphold the PNG order. The stated rationale for this decision in the appeal determination letter was to “support the safety measures implemented by University Police as we feel they are best placed to determine campus safety.” Further, the appeal determination letter stated that the complainant did not have “any legitimate need to have a physical presence on campus for any reason.”

OCR determined that the College may declare any individual who violates the Rules for the Maintenance of Public Order (the Rules) as PNG. If the individual is a student or staff member, the College follows the applicable disciplinary procedures. If the individual is a visitor or other third party, the College follows its guidelines for issuing PNG orders (PNG guidelines).¹³ Pursuant to the PNG guidelines, the College president or his or her designee is the sole individual with the authority to issue or modify a PNG order. The PNG guidelines also state that the PNG designation can be indefinite; and that although no formal appeal process is required, a visitor designated as a PNG should be able to seek reauthorization from the President or his or her designee to come onto campus for specific purposes. The PNG guidelines further provide that the decision to grant or deny reauthorization is within the discretion of the President or President’s office.

College staff informed OCR that, in practice, the College does not issue PNG letters to students.¹⁴ Pursuant to the PNG guidelines, “visitors” include all individuals not currently

¹³ See, the College’s “Guidelines for issuing persona non grata letters” dated May 21, 2012, from the SUNY Office of General Counsel to Chief Student Affairs Officers and Police Chiefs.

¹⁴ OCR determined that during academic years XXXX-XXXX through XXXX-XXXX, the College issued three PNG orders, other than the complainant’s PNG order; and, all three PNG orders were issued to non-students for an indefinite period of time. The College informed OCR that it had no knowledge regarding the disability status of the three non-students who were issued PNG orders.

registered as a student or employed by the campus at the time of the issuance of the PNG letter, regardless of whether they were formerly registered or are due to be registered in the future.¹⁵

The College asserted that the complainant met the definition of “visitor” in the PNG guidelines because she was not registered for classes at the time she was issued the PNG letter on XXXXXXXX XX, XXXX; thus, she was considered to have no legally protected right to be on campus.¹⁶ The College further asserted that pursuant to the PNG guidelines, the complainant had no right to a hearing or appeal while she was on her voluntary medical leave of absence; however, she could petition to have the PNG status removed once she communicated her intent to seek readmission.¹⁷ Pursuant to the PNG guidelines, the complainant was provided notice of her PNG status on XXXXXXXX XX, XXXX; and, was not offered the opportunity to have a hearing or right to appeal the PNG status. The College asserted that the appeals committee should not have made any determination regarding PNG status, because the PNG could only be lifted by the College president or his or her designee. OCR determined that once the complainant communicated her intent to seek readmission to the College following her XXXXX year suspension, the complainant was notified by letter from the associate vice president, dated XXXX XX, XXXX, that the PNG letter issued to the complainant on XXXXXXXX XX, XXXX, was still in effect, but the “terms of the PNG letter may be appealed in writing to the office responsible for issuing the original letter.”

The College informed OCR that since the issuance of the PNG letter on XXXXXXXX XX, XXXX to date, the complainant has not appealed the PNG letter or otherwise sought reauthorization to come onto campus, other than to attend an in-person meeting with the associate vice president on XXXX XX, XXXX. The complainant denied receiving any letter from the associate vice president, at any time, informing her that she could appeal the PNG; and asserted that, to the contrary, the associate vice president has informed her multiple times since XXXX, including at the in-person meeting on XXXX XX, XXXX, that the PNG order issued against her could not be lifted.

Prior to OCR’s completing the investigation of Allegation 3, on November 26, 2018, the College signed the enclosed agreement to resolve this allegation without further investigation. OCR will monitor the implementation of the resolution agreement. If the College fails to comply with the terms of the resolution agreement, OCR will resume its investigation. Upon the College’s satisfaction of the commitments made under the Agreement, OCR will close the case.

With respect to Allegation 4, the complainant alleged that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X,

¹⁵ Further, the PNG guidelines cite case law that held that a student who received a PNG letter after being admitted but before registering for a program had no protected interest in being present on campus grounds.

¹⁶ Further, the College informed OCR that neither the University police staff involved nor the Acting President had knowledge of the complainant’s disabilities when the PNG order was issued. The University Police Chief informed OCR that the campus police department has access only to students’ “directory information,” which includes a picture, home address, local address, and the person’s current class listings. If the person is not registered for classes at the time in question, the system would say “no class listings provided,” and the campus police would consider that person to be a non-student; i.e., a visitor who could be subject to a PNG order.

¹⁷ OCR determined that the College’s PNG guidelines do not explicitly address a student’s status once the student is on a medical leave of absence.

XXXX, with respect to the requirement that she meet with the associate vice president prior to making a formal application for readmission to the College. Specifically, the complainant asserted that the College's readmission policy does not specify any such requirement.

The College's Registrar's Office website provides information about the readmission process for students returning after an academic suspension or dismissal, or disciplinary suspension or dismissal; after a withdrawal, lapsed leave of absence or interruption in attendance; or, for graduation/degree conferral only.¹⁸ The Registrar's readmission webpage identifies criteria for readmission for each category described above. OCR determined that the Registrar's readmission webpage does not specify any requirement for a student seeking readmission to meet with the associate vice president prior to submitting a formal application for readmission.

The College confirmed that the complainant was subject to the requirement to meet with the associate vice president, as outlined in the appeal determination letter. The College asserted that its practice is to require all students seeking readmission following a disciplinary suspension to contact the associate vice president for an appointment to discuss readmission after satisfactorily completing all sanctions. The associate vice president informed OCR that the purpose of this meeting is to discuss what the student has done during the period of suspension, the student's plans for reacclimating to the campus community, strategies for success, and how to locate and contact any applicable resources that might aid in the student's success upon return. Further, the associate vice president informed OCR that he attends these meetings every semester and estimated that he has personally attended approximately 100 of these meetings.¹⁹ The complainant informed OCR that she met with the associate vice president on XXXX XX, XXXX, as required by the appeal determination letter; and, acknowledged that during this meeting, the associate vice president reviewed the complainant's suspension and discussed next steps in the complainant's readmission process.

OCR determined that during academic year XXXX-XXXX, 10 students in addition to the complainant sought readmission to the College after a suspension. None of these students was registered with the College's office of disability services as a student with a disability. All 10 of these students were required to meet with someone from the associate vice president's office prior to being able to pursue readmission.

Based on the foregoing, OCR determined that the College proffered a legitimate, nondiscriminatory reason for the appeals committee's imposing a requirement that the complainant meet with the associate vice president prior to making a formal application for readmission; namely, that its actions were consistent with its readmission practice. OCR determined that the proffered reason was not a pretext for discrimination, as the College treated the complainant consistent with its practice and required other similarly situated students without disabilities to meet with the associate vice president before readmission. Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disabilities, in relation to a disciplinary action initiated on XXXXXXXX X, XXXX, with respect to the requirement that she meet with the

¹⁸ See <http://www2.cortland.edu/offices/srrs/students/readmission/> (site last visited November 7, 2018).

¹⁹ The associate vice president informed OCR that he personally attends almost all of these meetings; and that if he does not attend a meeting, another representative from his office attends instead.

associate vice president prior to making a formal application for readmission to the College. Therefore, OCR will take no further action with respect to Allegation 4.

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.

The complainant may appeal OCR's determination regarding Allegations 1, 2, and 4. An appeal must be submitted within sixty (60) calendar days of the date of this letter. In the appeal, the complainant must explain why the complainant believes that the factual information was incomplete or incorrect, the legal analysis was incorrect, or the appropriate legal standard was not applied; and, how the correction of any error(s) would change the outcome of the case. Failure to do so may result in the dismissal of the appeal. The complainant must either submit a completed online appeal form or mail a written statement of no more than ten (10) pages (double-spaced, if typed). If submitted by mail, send to the Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue SW, Washington, D.C. 20202. If submitted by electronic mail, send to OCR@ed.gov. If submitted by fax, send to 202-453-6012.

If you have any questions, please contact Aditi Shah, Compliance Team Attorney, at (646) 428-3897 or aditi.shah@ed.gov; Amy Randhawa, Compliance Team Attorney, at (646) 428-3781 or sandeep.randhawa@ed.gov; or Félice A. Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Catherine Tretheway, Esq. (via email)
Charles Pensabene, Esq. (via email)