

April 21, 2020

Sent via email to only mcnamark@dyc.edu

Lorrie Clemo, Ph.D.
President
D'Youville College
320 Porter Avenue
Buffalo, New York 14201

Re: Case No. 02-19-2190
D'Youville College

Dear President Clemo:

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 D'Youville College (the College). The Complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with a notetaker as an auxiliary aid or service, for her XXXXX XXXXX XXXX course (the course), from January 25, 2019, to April 25, 2019 (Allegation 1). The Complainant also alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to the disability discrimination complaint she filed on May 2, 2019 (Allegation 2).

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 or 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.

In its investigation, OCR interviewed the Complainant and reviewed documentation that the College submitted. OCR made the following determinations.

For academic year 2018-2019, the Complainant was enrolled in the College's Masters in Science in XXXXX XXXXX XXXXX XXXXX XXXXX program (the program). During the spring 2019 semester, the Complainant was enrolled in five courses, including the course.¹

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 a notetaker as an auxiliary aid or service, for the course, from January 25, 2019, to April 25, 2019. Specifically, the Complainant asserted that although she asked the course professor (the Professor) and the College's Coordinator

¹ The Complainant was also enrolled in the following courses: XXXXX XXXXX XXXXX; XXXXX XXXXX; XXXXX XXXXX; and, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

of Accessibility Resources (the ARO Coordinator) to provide her with a notetaker for the course, the College failed to provide her with the necessary auxiliary aid during the spring 2019 semester.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), 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. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments and/or or auxiliary aids. In reviewing allegations regarding the provision of academic adjustments and/or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments and/or auxiliary aids were required; (2) the academic adjustments and/or auxiliary aids were necessary; (3) the appropriate academic adjustments and/or auxiliary aids were provided; and, (4) the academic adjustments and/or auxiliary aids were of adequate quality and effectiveness.

OCR determined that the College has a procedure for students with disabilities to request academic adjustments and/or auxiliary aids/services. Students with disabilities seeking academic adjustments and/or auxiliary aids/services must first register with the College's Accessibility Resources Office (ARO) and meet with the ARO Coordinator to discuss their requests. The College requires that students submit documentation of their disability that indicates the presence of a disability that substantially impairs the ability of the student to perform a major life activity necessary for the academic program; is recent and sufficient to document the current status of the impairment and its impact on the student's ability to perform major life activities necessary for the academic program; includes a diagnosis, test scores, and a description of the assessment procedures used; includes the credentials of the evaluator indicating that the person is appropriately licensed or certified to make the diagnostic statement for the disability; and, includes recommendations for accommodations and academic adjustments that may be appropriate to permit the student to have access to the programs and services of the College. The ARO Coordinator then meets with students to discuss the students' requests and determines the appropriate academic adjustments and/or auxiliary aids/services to be provided.

For the spring 2019 semester, the College approved the Complainant to receive the following academic adjustments and/or auxiliary aids: (1) double time for all testing; and, (b) notetaker services. During the course of the investigation, the College acknowledged that the Complainant may not have received the notetaker services for every class in the course. The Complainant earned a final grade of A- in the course.

With respect to Allegation 2, the Complainant alleged that the College discriminated against her, on the basis of her disability, by failing to respond appropriately to the disability discrimination complaint she filed on May 2, 2019. Specifically, the Complainant asserted that on May 2, 2019, she met with the director of the College's Learning Center, the then-director of the College's Retention Services, and the then-dean of the nursing program, to complain about her professors' failure to provide her with approved academic adjustments/auxiliary aids for the fall 2018 and spring 2019 semesters. The Complainant alleged that the College failed to address her concerns.

The regulation implementing Section 504, at 34 C.F.R. § 104.43(a), states that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any academic postsecondary education program or activity to which subpart E of the regulation applies. 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.

OCR determined that the College's School of XXXXX has an "Academic Appeals Procedures" (the grievance procedure), which is posted on the College's website.² A section of the grievance procedure is entitled, "Complaints of Discrimination or Harassment." This section applies to complaints alleging discrimination, including on the basis of disability, with respect to the College's academic programs, policies, and practices. Upon receipt of a discrimination complaint with respect to its academic programs, policies, and practices, the College staff is to immediately notify the College's Title IX Coordinator and/or the ARO coordinator. The College stated that students are encouraged to consult directly with the Title IX Coordinator and/or the ARO Coordinator in the event they are seeking to file a complaint related to discrimination or harassment. The College stated that if a student's complaint relates to Section 504 or the Americans with Disabilities Act of 1990, or the obligations of the College under those laws, the student filing the complaint will be encouraged to consult with the ARO Coordinator.³ The College acknowledged that the Complainant met with College administrators regarding her courses in the fall 2018 and spring 2019 semesters; but asserted that she did not file a formal disability discrimination complaint.

On February 27, 2020, the College signed the enclosed resolution agreement (Agreement) to voluntarily resolve the Complainant's allegations without further investigation, pursuant to Section 302 of OCR's *Case Processing Manual*. OCR will monitor the implementation of the 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.

² See <http://www.dyc.edu/catalog/current/policies-procedures/academic-appeals-procedures.aspx> (site last visited on April 21, 2020).

³ The College's Student Code of Conduct (the code), however, recommends that any students or employees wishing to file a grievance in relation to Section 504 seek out the "Section 504 coordinator to assist with the processing of the complaint." See the code, at page 33, available at <http://www.dyc.edu/campus-life/support-services/docs/student-code-conduct.pdf> (site last visited on April 21, 2020). For academic year 2019-2020, the College's Section 504 coordinator is the College's health center director, not the ARO coordinator. See <http://www.dyc.edu/campus-life/support-services/docs/student-code-conduct.pdf> (site last visited on April 21, 2020). Accordingly, the College has provided information that might confuse students as to with whom they should file a complaint of disability discrimination. OCR will address this concern by providing technical assistance to the College.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because the individual 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 Genara Necos, Compliance Team Attorney, at (646) 428-3828 or genara.necos@ed.gov; Grace Kim, Compliance Team Attorney, at (646) 428-3977 or grace.d.kim@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or nadja.r.allen.gill@ed.gov.

Sincerely,

/S/

Timothy C. J. Blanchard

Encl.

cc: Michael Hickey, Esq.