



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

November 29, 2022

Sent via email only to jfund@hunterbusinessschool.edu

Jay Fund
President
Hunter Business School
3601 Hempstead Turnpike
Levittown, New York 11756

Re: Case No. 02-22-2289
Hunter Business School

Dear President Fund:

On August 30, 2022, the U.S. Department of Education, Office for Civil Rights (OCR) received a complaint filed against Hunter Business School. The Complainant alleged that the School discriminated against her on the basis of her disability by refusing to assist her with obtaining testing modifications for the ATI Nursing entrance exam she took on or about August 19, 2022.

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). As a recipient of federal financial assistance from the Department, the School is subject to 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. In reviewing allegations regarding the provision of academic adjustments and/or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustments and/or auxiliary aids/services were required; (2) the academic adjustments and/or auxiliary aids/services were necessary; (3) the appropriate academic adjustments and/or auxiliary aids/services were provided; and, (4) the academic adjustments or auxiliary aids and/or 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. It is also the student's responsibility to know and follow a postsecondary school's procedures for requesting an academic adjustment and/or auxiliary aids/services.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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On XXXXXX XX, 2022, the Complainant contacted the School admissions counselor about joining the School's Practical Nursing program for the fall 2022 semester. The Complainant informed the admissions counselor that she had an Individualized Education Program (IEP) and requested testing modifications for the ATI Practical Nursing entrance exam (the exam), which was a prerequisite for the program. The Complainant requested XXXXXX XXXX and a XXXXX, and on XXXXXX XX, 2022, provided a copy of her IEP in support of her request. The School approved the Complainant's request for XXXXXX XXXX during the Complainant's conversation with the admissions counselor on XXXXXX X, 2022, but did not approve her request for a XXXXX. On or about XXXXXX XX, 2022, the Student took the exam at the School; however, the School did not provide XXXXXX XXXX or other testing modifications. The Complainant received a XXXXX grade on the exam and she did not join the program for the fall 2022 semester.

Pursuant to Section 203 of OCR's *Case Processing Manual*,¹ on October 4, 2022, OCR contacted the School to provide notice of the complaint and discuss OCR's Rapid Resolution Process (RRP) to address concerns regarding the availability of academic adjustments and auxiliary aids to applicants to the School's programs. The School communicated its willingness to notify the Complainant that she may sit for a future administration of the exam, at no cost, with testing modifications as approved by ATI, and to provide training to School administrators and staff regarding the School's obligations under Section 504. On November 29, 2022, the School voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's *Case Processing Manual*. OCR will monitor the School's implementation of the resolution agreement. Upon the School's compliance with the terms of the resolution agreement, and Section 504 and its implementing regulation at 34 C.F.R. Part 104, which were at issue in this case, OCR will close the case.

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 School must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint against the School with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

¹ See *Case Processing Manual* (July 18, 2022) at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcm.pdf>.

If you have any questions, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov; or me, at (646) 428-3901 or alexander.artz@ed.gov.

Sincerely,

/s/

Alexander H. Artz
Compliance Team Leader

Attachment