



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

RACHEL POMERANTZ
DIRECTOR
NEW YORK OFFICE

May 12, 2023

Sent via email only to: president@newpaltz.edu

Dr. Darrell P. Wheeler
President
SUNY New Paltz
1 Hawk Drive
New Paltz, New York 12561

Re: Case No. 02-23-2039
State University of New York at New Paltz

Dear Dr. Wheeler:

By letter dated January 23, 2023, the U.S. Department of Education, Office for Civil Rights (OCR) notified you that it would investigate a complaint filed against the State University of New York (SUNY) at New Paltz. The Complainant alleged that the University discriminated against her son (the Student) on the basis of his disability by denying his requests for the auxiliary aid of written class notes (Allegation 1) and the academic adjustment of extended time over multiple days for essay exams (Allegation 2), for academic year 2022-2023.

As discussed below, on May 3, 2023, before OCR completed its investigation of the allegations, OCR contacted the University to discuss OCR's Rapid Resolution Process (RRP) pursuant to Section 203 of OCR's *Case Processing Manual (CPM)*.¹ On May 4, 2023, the University expressed its willingness to voluntarily resolve the allegations through RRP. On May 11, 2023, the University voluntarily entered into the attached resolution agreement to resolve the complaint, in accordance with Section 302 of OCR's *CPM*.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulations at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulations at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. As a public entity that receives federal financial assistance from the Department, the University is subject to Section 504, Title II, and their implementing regulations.

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

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), states that no qualified individual with a disability shall, on the basis of 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 Title II contains a similar provision at 28 C.F.R. § 35.130(a).

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 or auxiliary aids/services, OCR considers whether: (1) the student provided adequate notice to the recipient that the 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 or auxiliary aids. It is also the student’s responsibility to know and follow a postsecondary school’s procedures for requesting an academic adjustment or auxiliary aids/services.

During academic year 2022-2023, the Student was registered with the University’s Disability Resource Center (DRC) as a student with a disability.² The DRC approved the Student to receive the following academic adjustments and auxiliary aids for both the fall 2022 and spring 2023 semesters: extended (double) time on examinations and “notetaking support/electronics for class notes (the student is allowed access to electronic devices to record class lectures).”

With respect to Allegation 1, the Complainant alleged that the University discriminated against the Student on the basis of his disability by denying his requests for the auxiliary aid of written class notes, for academic year 2022-2023. The Complainant alleged that the University refused to provide the Student with a notetaker for the fall 2022 semester, and instead provided Glean notetaking software.³ The Complainant alleged that the Glean notetaking software was not an effective auxiliary aid for the Student because the Student’s disabilities affected his memory and he could not remember to press the record button to enable the Glean software to record classes.

OCR determined that in an email dated August 26, 2022, the University notified the Student and others registered with DRC that it would “...solely us[e] technology software programs to assist with notetaking in the classroom.” In the email, the University advised students to consider making an appointment with the DRC’s XXXXXXXX XXXXXXXXXX XXX XXXXXXXXXX XXXXXXXXXXXXX to “discuss how to set up either Glean for notetaking or Microsoft OneNote in [student’s] classes this fall and beyond.”

² The Student is diagnosed with XXXX and XXXXXXXXXXXX (XXX). The Complainant stated that the Student has a XXXXXXXX XXXXXXXXXX XXXXXXXXXXXXXX (XXX) disorder and has deficits in XXXXXXXXXXXXXX XXXXXXXXXX, which significantly diminish his XXXXXXXXXX XXXXXXXXXX.

³ See <https://glean.co/>.

On multiple occasions during both the fall 2022 and spring 2023 semesters, the Complainant and the Student contacted the DRC Director, the XXXXXXXXXXX XXXXXXXXXX, and XXXXXXXX XXXXXXXXXXXXXX XXX XXXXXXXXXX XXXXXXXXXXXXXXX (XX XXXXXXXXXXXXXXX) to request assistance with obtaining class notes due to the Student's disabilities, stating that the Glean notetaking software was not an effective auxiliary aid for the Student. In response, the XX XXXXXXXXXXXXXXX provided the Student with training on the Glean software and assisted the Student in setting reminders to use the software. By email to the XXXXXXXXXXX XXXXXXXXXX dated October XX, 2022, the Student requested that the University provide him with class recordings or class notes, stating that despite the training and reminders for the Glean software, he could not remember to start recording due to his disabilities and had no class recordings to date. OCR determined that the Complainant, Student, and DRC staff continued to discuss the ineffectiveness of the Glean software for the Student during the spring 2023 semester. The University provided information to OCR indicating that in March 2023, the DRC Director and XX XXXXXXXXXXXXXXX met with the Student, updated his accommodations plan, and secured notetakers to provide the Student with written class notes as an auxiliary aid for the remainder of the spring 2023 semester.

With respect to Allegation 2, the Complainant alleged that the University discriminated against the Student on the basis of his disability by denying his request for the academic adjustment of extended time over multiple days for essay exams during academic year 2022-2023. The Complainant alleged that the University refused to add this language to the Student's accommodation plan.

Prior to the completion of OCR's investigation of the Complainant's allegations, OCR noted possible compliance concerns with respect to whether the University appropriately engaged in the interactive process and made an individualized determination regarding the Student's requests for written class notes as an auxiliary aid and extended time over multiple days for essay exams as an academic adjustment during academic year 2022-2023. Additionally, OCR identified possible compliance concerns with the University's use of notetaking software as the only notetaking support it offered students with disabilities during academic year 2022-2023. As stated previously, on May 11, 2023, the University signed the attached Agreement to voluntarily resolve the Complainant's allegations that the University discriminated against the Student on the basis of his disability by denying his requests for the auxiliary aid of written class notes and the academic adjustment of extended time over multiple days for essay exams for academic year 2022-2023.

Pursuant to the Agreement, the University agreed to offer the Student an opportunity in writing to request any individual remedies that the Student believes are appropriate relating to the University's (1) provision of Glean notetaking software and (2) failure to properly consider his request for extended time over multiple days for essay exams; and consider the Student's requested remedies and any information the Student provides in support of his request, review any records in the University's possession relevant to the Student's requested remedies, and determine whether to grant the Student's request for remedies in whole or in part or take any other action with respect to the Student. The University also agreed to meet with the Student prior to the start of the next semester in which the Student is enrolled to engage in the interactive process regarding the Student's requests for the academic adjustments and/or auxiliary aid and services of written class notes and extended time over multiple days for essay exams.

The University further agreed to review, and if necessary, revise its procedures for providing class notes/notetaking services as an academic adjustment and/or auxiliary aid or service to students with disabilities to ensure that its procedures include the consideration of effective alternatives when a student reports that the provided notetaking services are not effective. The University also agreed to send email notifications to students registered with the DRC that requests for notetaking services will be reviewed on a case-by-case basis with consideration of individualized circumstances, such as the nature of a student's disability and the nature of the course(s) at issue; and clarify that notetaking services must be effective, which includes a requirement that they provide a student an equal opportunity to participate in the University's programs.

In addition, the University agreed to identify each student with a disability whom the University approved for class notes/notetaking services as a necessary academic adjustment and/or auxiliary aid or service for academic year 2022-2023. For each student identified, the University will invite the student to re-engage in the interactive process to determine whether the student requires changes to their approved academic adjustments and/or auxiliary aids.

Additionally, the University agreed to train University administrators, faculty, Disability Resource Center staff, Assistive Technology staff, and the University's Section 504 Coordinator regarding the University's obligation to make individualized determinations on requests for academic adjustments and/or auxiliary aids and services, in accordance with the regulation implementing Section 504; the University's interactive process and procedures for reviewing and responding to inquiries and requests for academic adjustments and/or auxiliary aids and services; and the University's process for ensuring that it provides approved academic adjustments and/or auxiliary aids and services in a timely manner.

OCR will monitor the University's implementation of the Agreement. Upon the University's compliance with the terms of the Agreement, and Section 504 and its implementing regulations at 34 C.F.R. Part 104, and Title II and its implementing regulations at 28 C.F.R. Part 35, 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 University 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 University 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.

If you have any questions, please contact Grace Kim, Compliance Team Attorney, at (202) 987-1421 or grace.d.kim@ed.gov; Karen McDowell, Compliance Team Attorney, at (646) 428-3735 or karen.mcdowell@ed.gov; or Jocelyn Panicali, Compliance Team Leader, at (646) 428-3796 or jocelyn.panicali@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

Attachment

cc: XXXXX XX XXXXXXXXXXXXX, Esq.