



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

REGION IX  
CALIFORNIA

50 UNITED NATIONS PLAZA  
MAIL BOX 1200; ROOM 1545  
SAN FRANCISCO, CA 94102

August 28, 2017

Wes Bryan  
President  
Golden West College  
15744 Goldenwest Street  
Huntington Beach, CA 92647

(In reply, please refer to OCR Docket Number 09-15-2045.)

Dear President Bryan,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Golden West College (College). The Complainant alleged that the College discriminated against her on the basis of disability. Specifically, OCR investigated the following issues:

- Whether the College failed to provide the Complainant with communication auxiliary aids and services, including qualified sign language interpreters, testing accommodations and listening support such as closed captioning, that would have provided her with effective communication necessary to ensure that she could participate in the education program in a nondiscriminatory manner;
- Whether the College treated the Complainant differently on the basis of disability in its supervision of the Complainant and when it dismissed Complainant from the Nursing Program after her clinical performance was assessed according to a different standard than non-disabled students.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of federal financial assistance and as a public college, the College is subject to Section 504, Title II, and their implementing regulations.

To investigate this complaint, OCR conducted interviews with eight individuals from the College including the: Director of the office for Disabled Students Programs and Services (DSPS), Alternate Media Access Specialist, Interpreter Specialist, Clinical Instructor, Nursing faculty, Nursing Department Chair, Associate Dean of the College of Nursing, and the Vice President for Administrative Services. OCR also reviewed documents and other information provided by the Complainant and the College. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

**Allegation 1: Whether the College failed to provide the Complainant with communication auxiliary aids and services, including qualified sign language interpreters, testing accommodations and listening**

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

**support such as closed captioning, that would have provided her with effective communication necessary to ensure that she could participate in the education program in a nondiscriminatory manner.**

### **Legal Standards**

The Section 504 regulations at 34 C.F.R. §104.3(j)(1)(i), defines an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment. With respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the college or university's education program or activity [section 104.32(1)(3)].

Similarly, the Title II regulations, at 28 C.F.R. §35.108, defines a disability as a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Pursuant to 28 C.F.R. §35.108 (d)(1)(viii), the determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. 28 C.F.R. §35.104 defines a qualified individual with a disability as one who, with or without reasonable modifications to rules, policies, or practices, the removal or architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or participation in the college or university's programs and activities. These definitions are incorporated into Section 504 through Section 7 of the ADA Amendments Act of 2008.

The regulation at 34 C.F.R. §104.43(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contains a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual or speaking skills. 34 C.F.R. §104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments. Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

28 C.F.R. §35.160(b) provides that a public college or university shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity and that the type of auxiliary aid or services necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to

the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

The Title II regulations, at 28 C.F.R. §35.160(a), require a public college or university to take appropriate steps to ensure that communication with participants is as effective as communication with others. In determining what type of auxiliary aid and service is necessary to ensure effective communication, 28 C.F.R. §35.160(b)(2) requires that the public college or university give primary consideration to the requests of the individual with disabilities. Communication is construed broadly to mean the transfer of information. In determining whether communication is as effective as that provided to non-disabled persons, OCR looks at the timeliness of the delivery, the individual with disabilities preferred method of communication, the nature, length, and complexity of the communication involved, the context in which the communication is taking place, whether the communication is in an accessible format, and whether the communication is provided in such a way as to protect the privacy and independence of the individual. 28 C.F.R. §35.160(b)(2). For specific types of communication methods, OCR also analyzes the requirements in the implementing regulations, at 28 C.F.R. §§35.160 and 35.161.

### **Factual Findings**

The following facts are relevant to OCR's analysis.

The Complainant has a physical impairment, specifically mild to profound sensorineural bilateral hearing loss, which substantially limits a major life activity of hearing. On March XX, 2014, the Complainant was conditionally admitted into the College's Associate Degree in Nursing program (Program). The Nursing Program required that students meet specific physical and emotional health standards for admission into the program, including an ability to hear at 30 decibels (dB) in each ear. Students are admitted conditionally until they provide documentation of, among other things, a physical assessment showing that they meet these standards. In this case, the Complainant submitted medical documentation that she could hear at 30 decibels when she wore her hearing aids. Even with hearing aids, the Complainant's audiologist stated that the Complainant would still miss fragments of speech and have significant difficulty hearing.

Since 2011, the Complainant had been a student at the College and successfully completed several other College courses, including Chemistry, Math, English, and other health related courses. Documentation provided by the College, shows that during semesters in 2013 and 2014 the Complainant was registered with the College's DSPS and received aids and services including interpreters, use of CART, note taking, and testing accommodations of 1.5 times the allotted exam time. The DSPS office told OCR that it describes the range of accommodations approved for a student on the Student Educational Contract (SEC). OCR reviewed the documents provided, including the SEC in place at this time, and found incomplete information describing what accommodations DSPS had "approved". Therefore OCR carefully reviewed the email correspondence between DSPS and the Nursing faculty for information regarding what accommodations DSPS was advocating for on behalf of the Complainant.

The Complainant alleged that faculty and administrators in the Nursing Department, who run the Program, denied, limited, and delayed her receipt of the accommodations she needed to obtain equal access to all the Program components. While the DSPS office supported and attempted to facilitate her receipt of accommodations, she alleged that Program administrators and faculty consistently resisted implementation, removed already approved accommodations, and did not work cooperatively with

DSPS. As a result, the Complainant alleged that she experienced difficulty accessing the curriculum, performing in the clinical setting, and was ultimately dismissed less than two months after starting the program.

DSPS identified the SEC as the operative document listing the student's accommodations. The College provided SEC's for spring and fall 2013 semesters but did not provide one for spring or fall 2014, the semester at issue. The November 2013 SEC for the Student describes the Student's long-term educational goal (participation in the nursing program) but does not describe any accommodations. Therefore, OCR interviewed all relevant parties (staff of DSPS and the Nursing Program) and reviewed other relevant documentation to understand what accommodations were either approved by the College or under consideration.

Prior to beginning the Program, the Complainant began communicating with DSPS and Nursing Department staff about securing necessary accommodations. On April XX, 2014, the Complainant submitted a questionnaire providing information to be used by the faculty to select her clinical placement. Among the information provided was that she was hearing impaired and would benefit from certain accommodations, including but not limited to, interpreters, Communication Access Real-time Translation or CART, and captioning on any videos for the course.

On June X, 2014, the Complainant met with the DSPS Director and Interpreter Specialist to discuss her requests for accommodations. According to notes from the meeting, the Complainant indicated she would need interpreters for classroom and lab settings, CART for lecture only and no accommodations at the clinical level with patients. An Interpreter Specialist (who works for DSPS) suggested the use of an Assistive Listening Device (ALD) in the clinical settings to assist the student with hearing the patient and respecting the patient's privacy.

On June X, 2014 the Complainant attended an orientation for students admitted to the Program for the fall 2014. At the orientation, the Complainant learned more about the Program's structure, logistics, and requirements. First, the Complainant was informed that she would be assigned to a hospital (hereinafter the Hospital) to complete her clinical assignment for which she would have to attend an in-person orientation and complete a series of videos online. Second, the Complainant learned that students were required to view videos from three places: (1) YouTube (28 videos, 196 minutes of course required content ); (2) the College's Nurse Server (9 videos, 170 minutes of course required content); and (3) the Hospital's website. In the days following her initial meeting with DSPS staff and the Program orientation, the Complainant requested from the Director of DSPS and the interpreter Specialist via email that all nursing videos be closed captioned. She also requested interpreters for lab classes and for an orientation session at the Hospital. In response to Complainant's email, the DSPS Director stated that he would have the DSPS Media Access Specialist contact the Nursing Program about the Complainant's request for closed captioning; however he was uncertain if the closed captioning could be completed before the Program started in late August.

On June XX, 2014, the Interpreter Specialist emailed Complainant to inform her that the videos would not be available for her to view until mid-August and that they would not be captioned but DSPS was looking into other options for her to access the information. The Interpreter Specialist stated that although the videos are not captioned, some of them have step by step written directions to follow along with, and that for those that do not have directions, the Nursing Department may have alternate demonstrations.

Also on June XX, 2014, the Lead Instructor sent an internal e-mail to others in the Nursing Department to summarize her meeting from the prior week with the DSPS Director and Interpreter Specialist. She noted that the Nursing Department needed to ensure that all the videos were closed captioned. She requested that the Department Chair confirm whether the orientation videos at the Hospital where the Complainant would work in a clinical setting were closed captioned.

On July XX, 2014, the Complainant met with the Associate Dean to discuss the requirements and needs for the semester. The notes from the meeting indicate that the Complainant agreed to wear her hearing aid and use an ALD in the lab and clinical settings and rely on CART providers during lecture. The notes are unclear whether the Complainant and the Associate Dean arrived at an agreement about whether her hearing aid and an ALD would suffice in the clinical setting or if she would require additional support from interpreters. Later, in an e-mail to the Lead Instructor, the Associate Dean stated that she had steered the Complainant away from using interpreters because of privacy concerns of patients.

On July XX, 2014, the Lead Instructor, Nursing Faculty 1, the Department Chair and the Associate Dean exchanged a series of emails commenting on their recent communication with the Complainant. As part of this exchange, the Associate Dean described her meeting with the Complainant two days prior and noted that the Complainant missed parts of the conversation and was seeking clarification. She told the faculty that the Director of DSPS mentioned "this is a behavior pattern in students with hearing disabilities I can appreciate her concerns and so I am more than happy to continue 'boundary setting' with her and reiterate to her that she cannot pester faculty with her concerns at this time as all will be revealed in due course." The Lead Instructor told the other faculty, "we will be documenting our communication with her in a clear and concise manner as we work towards setting appropriate boundaries." On July XX, 2014, the Department Chair emailed the Lead Instructor and stated that the orientation videos for the clinical rotation at the Hospital were not closed captioned but inquired whether the Complainant could just listen to the video with headsets and adjust the volume or in the alternative the Complainant could attend a computer class at the hospital. She also suggested having the student view the video with assistance from DSPS.

On July XX, 2014 DSPS received access to the YouTube videos and began the process of having them closed captioned. Also on July XX, 2014, the Lead Instructor forwarded resources from DSPS via email to the Department Chair, Nursing Faculty 1 and the Clinical Instructor. The Department Chair responded by stating, "This is going to be interesting. Just like our ESL students, medical terminology will have to be spelled out. Are we going to get interrupted and have to slow down when we use such words?"

In late July and early August, the Lead Instructor and staff and DSPS exchanged multiple e-mails about how to assist the Complainant in accessing videos without captioning; Department staff confirmed that they were unable to locate instructional videos with captioning and students would be tested on information contained in the videos early in the term. They also confirmed that the Hospital required students to view several videos, but that none of the videos were captioned. Department staff discussed whether the Hospital would be willing to have the videos captioned. Because the clinical rotation started one month after instruction started in the third week of September, the faculty opined that it did not appear that DSPS would have adequate time to have the Hospital's videos captioned. The College did not request that the Hospital grant the College access to the videos so that it could have them captioned or that the hospital have the videos closed captioned.

During this period, the Nursing faculty requested additional documentation from the Complainant to show that she was able to hear 30 dB in each ear with hearing aids. The Complainant provided the

results of a hearing exam in June 2014; in August 2014, she submitted an audiometry report to the faculty, as well as an authorization for her medical provider to communicate directly with the faculty about any additional questions. Once the faculty received the additional documentation that the Complainant could hear at 30 dB with her hearing aids, they expressed opinions in internal e-mail that hearing at that level meant no accommodations were necessary.

On August X, 2014, the Lead Instructor emailed the User Support Technician in the College's Information Technology department to ask him to work with DSPS on the FM system, which was needed in order for the ALD to work in the nursing building. In response, the User Support Technician emailed the Associate Dean and Lead Instructor, among others, informing them that the building was not set up for the FM service. There is no information in the record that would show that the Complainant was informed that the building was not equipped, and the Complainant told OCR that she was provided an ALD for her use in class but when she took the device to the faculty so they could wear the microphone, she said that the staff refused to allow her to do so.

On August XX, 2014, the Lead Instructor sent an internal email and questioned the range of the Complainant's requests for accommodation (CART, interpreters, captioned videos) based on her incorrect understanding that her physical assessment indicated an adequate level of hearing (at 30dB). On August XX, 2014, a faculty member responded that the Complainant had not been admitted with special considerations and that she was required to meet the physical eligibility requirements, which the health care provider confirmed were met with the use of hearing aids. She further concluded, even though her conclusion was not supported by the medical documentation provided, that the Complainant could watch the videos without any accommodation. The Lead Instructor responded that the Department was not disputing the degree of the Complainant's disability, and they had to abide by the recommendations of DSPS, which supported the Complainant's request for accommodations.

On August XX, 2014 the YouTube videos were made available to all students in the Program. However, none were captioned.

In mid-August 2014, the Complainant submitted a detailed request to DSPS for the following auxiliary aids and services: sign language interpreters for lab components on Mondays and Tuesdays and for human patient simulation labs on Thursdays, CART providers for all lectures on Mondays and Tuesdays and for specific one-time events such as review sessions, and a sign language interpreter for the hospital orientation program for her clinical work. She also requested testing accommodations (extra time).

On August XX, 2014, the Complainant met with Nursing Program and DSPS staff to discuss the captioning of videos. DSPS informed her that the videos that all students were required to review as part of the curriculum and those that she was required to review as a prerequisite to participating in the clinic program would not be captioned because of time constraints. During the meeting, the nursing department faculty also indicated that there were 8-12 hours of videos on modules required by the hospital and none were captioned. The group discussed having the Complainant use alternative strategies to access the videos, such as rewinding sections and listening to them multiple times, and adjusting the volume. During the meeting, the Complainant attempted to access a video without captioning and expressed difficulty but nonetheless agreed to attempt the videos at home. The Complaint stated that she agreed because she was "stressed" about the tone of participants at the meeting, particularly when faculty inaccurately stated that she demonstrated "normal hearing" on her physical assessment as long as she used her hearing aids, thereby suggesting that they were questioning whether she had a disability that required accommodation. The DSPS Director stated to OCR that in

light of the faculty's view that the student did not need accommodations if she could hear, he had to do some education with them around the Complainant's particular needs and explained to the faculty that she was eligible for services.

Later that day, the Complainant emailed the Interpreter Specialist stating that she had watched some of the YouTube videos at home and was able to hear some of what was said but that there was content she was not able to hear because of static, talking too fast, the speaker was facing away from the screen, accents or other background noises. On August XX, 2014, the Complainant provided the same feedback to the DSPS Director and the Associate Dean, and added that watching the videos with her hearing aids was not sufficient in allowing her to access the content. Following receipt of this e-mail, the Lead Instructor responded to the Associate Dean that it was "unreasonable and burdensome" to expect the Program to change its curriculum to accommodate one student. She stated that DSPS staff should "write down" portions of the videos or use CART services while she viewed them. The Lead Instructor questioned whether the Complainant should have been allowed in the program since having "normal hearing" with hearing aids was a requirement for entry. In response to Lead Instructor, the Associate Dean emailed her back and stated that the Program should contact the Complainant's physician for further clarification as to her capabilities. She stated that she was against withholding the videos for instruction just for "one student who is technically able to hear within normal parameters with her hearing aid."

On this same day, DSPS produced documentation confirming that the Complainant was to receive 1.5 times the allotted exam time. The Complainant submitted an Accommodations Request Form, also dated August XX, 2014, requesting classroom and online testing accommodations for the nursing lecture class. On August XX, 2014, the Lead Instructor signed off on the form.

On August XX, 2014, the Associate Dean responded to Complainant's email and encouraged her to try to view the videos at the DSPS office where she could use the external speakers; if that was not sufficient, she could request an interpreter to view the videos. The Associate Dean encouraged the Complainant to try the above suggestions as soon as possible especially given the short timeframe within which she needed to get herself up to speed with the rest of her colleagues. She encouraged the Complainant to use "fully functioning hearing aids" and sit close to the instructor to optimize her hearing everything being said in class. She asked the Complainant to sign a medical release form so the College could take further steps to determine the extent of her hearing loss.

On August XX, 2014, the Media Access Specialist (who resides within DSPS) updated the Nursing Department that all the YouTube instructional videos had been sent for captioning and would be available shortly; she noted that she could have had the captioning completed sooner but was having difficulty accessing the videos located on the Nurse server.

On August XX, 2014, the Complainant provided the Associate Dean and the faculty with a copy of her July X, 2014 audiogram which describes the nature of her hearing loss. Follow-up e-mails amongst Nursing Department faculty confirmed ongoing discussion about whether the Complainant satisfied the basic requirement with respect to hearing at 30dB. On or about August XX, 2014, the Associate Dean spoke with the Complainant's audiologist and learned that with her hearing aids the Complainant can hear a person whispering in a low voice however, she suffers from profound loss of hearing at higher frequencies such as that of a normal conversation and someone speaking in a high voice. Also on August XX, 2014, the Associate Dean informed the Lead Instructor via email that she met with the Complainant and reviewed with her the guidelines delineated by the College's Director of Risk Services, which she

referred to as the stepwise approach to providing the Complainant with her accommodations. Under this approach the Complainant would use her hearing aids in the classroom and lab and then report back to the faculty whether that was working for her. And, the Complainant would attempt to participate in lab activities without an interpreter so as not “to disrupt the classroom environment.”

Between August XX and XX, 2014, the Complainant received by email, captioned copies of 22 of the instructional videos available on YouTube and on September XXX she received the remaining six YouTube videos. She was required to review all of these videos prior to August XX, 2014. The Program did not provide her with an extension, even though the videos had been provided to her 14 days after they were provided to all other students in the Program. On August XX, 2014, the Associate Dean responded to the email from Lead Instructor and clarified that they were going to follow the guidelines delineated by the College’s Director of Risk Services, the stepwise approach. The Associate Dean further clarified that the Complainant was going to use hearing aids in the classroom and NEST lab and then provide the faculty feedback as to how that worked for her. If the hearing aids alone were unsatisfactory then they would move the Complainant to an amplified system. The Associate Dean further noted that the “feedback is for you all to document and photograph as we should identify areas where she may be unsafe and need more assistance.”

On the first day of instruction, August XX, 2014, the Complainant met with the Associate Dean, the Department Chair, the Lead Instructor, and Nursing Faculty 1. The Complainant reported difficulty accessing content in lectures because the one CART provider was overwhelmed and needed a second one to provide relief. She confirmed receiving adequate notetaking once the adjustment was made for a second CART provider. She again requested closed captioning of a video about medical privacy (HIPPA), which was required as it was one of the nine videos on the Nurse Server.

The faculty respondent by asking the Complainant to rely on interpreters during the lab presentations and not during the demonstration of skills so that she could be prepared to work in the hospital setting, where she would not have an interpreter present. The Complainant agreed to try the requested approach. Based on an incorrect understanding of the Complainant’s hearing ability and what 30db hearing entails, the Associate Dean, the Department Chair, the Lead Instructor, and Nursing Faculty 1 again inaccurately stated that, since the Complainant tested as having “normal hearing with the use of aids,” there was no rationale for her request for CART and interpreters. They expressed concerns that use of CART and interpreters in the classroom could negatively impact group work and cooperative learning.

On the same day, the DSPS Media Access Specialist emailed the Lead Instructor to confirm that she had sent the 9 videos on the Nurse Server (of which the HIPPA video was one) to the captioning vendor for a quote and begun the process to seek approval for funding. The Lead Instructor responded that the Nursing Department had determined the Complainant would not need to be provided with any captioning for videos.

On August XX, 2014, the Lead Instructor informed the Complainant that she would need to complete all exams at the same time as the rest of the class if she chose to take the exam in the DSPS office and, therefore, she would need to begin the class at 12:45 p.m. to be finished at 2:15 p.m. She noted that there was lecture after the math exam. The Complainant responded and indicated that since she did not want to miss the lecture following the Math exam, she would take the exam in class without the extra time accommodation. OCR confirmed that the Complainant never received the extra time accommodation.

On September X, 2014, the Complainant met with the DSPS Director, the Associate Dean, the Lead Instructor, and other Nursing faculty to again review the provision of accommodations. During the meeting, the Lead Instructor reduced the amount of interpreting minutes for six specific events, overriding the request for such accommodations made by the Complainant. For example, the Complainant's request for over 7 hours of interpreter assistance at Senior Center Day where was reduced to 2 hours. The notes from the meeting did not indicate the reason the Lead Instructor reduced the interpreting minutes.

On September X, 2014, Interpreter Specialist was informed by the Complainant's interpreters that the nursing faculty did not allow them to enter the lab. The Interpreter Specialist informed OCR that she clarified the situation with the nursing faculty and was informed that the Lead Instructor had only told the interpreters that they were not needed at that particular time because it was a clinical simulation, during which interpreters would not be interpreting. The Interpreter Specialist told OCR that it took, "a couple of days in the nursing program to get that confusion worked out," but that ultimately she and the Director of DSPS clarified that the interpreters could be with the Complainant the entire lab period. Complainant told OCR that as a result of not having her interpreters with her throughout the labs on various days, she "missed essential information and was not able to pass [assessments] on the first try."

On September XX, 2014, the Complainant met with the Associate Dean, faculty and her interpreters to discuss the status of her receipt of accommodations. The Complainant stated that she would not need an interpreter in the clinical setting except during mid-conference. She stated that the interpreters were distracting while she was undergoing phlebotomy training in the lab, and she was making an inference that relying on interpreters in the hospital would be equally distracting.

On September XX, 2014, the Hospital informed the Nursing Department that any interpreters working with the Complainant would need to undergo specific training and screening and have to agree to specific reporting requirements. On September XX, 2014, the Complainant met with the Lead Instructor and was informed that she would now be required to have interpreters with her during her clinical shifts at the Hospital and in the Program labs. OCR interviews confirmed that the Department faculty made this decision about interpreters because there were concerns about the Complainant and patient safety. The Complainant agreed to this accommodation.

As a result of the meeting with the Lead Instructor on September XX, 2014, the Complainant emailed the Interpreter Specialist on September XX, 2014, and requested interpreters for the entire time during her labs and her shifts at the hospital. The Complainant also told the Interpreter Specialist that the nursing faculty asked her if she watched the uncaptioned videos from the Nurse Server. The Complainant told the Interpreter Specialist that she attempted to watch the videos but did not fully understand what was being said due to the static and the quality of the recording.

On September XX, 2014, the Interpreter Specialist informed the Complainant that DSPS could not send the interpreter assigned for the Complainant's first shift at the Hospital on Friday, September XX, 2014, because the person lacked the required vaccinations and background clearance.

On September XX, 2014, the Complainant began her clinical rotation at the Hospital. On that day, the Complainant was not provided any interpreter service and based on her performance on that shift, she was placed on a Learning Contract. The Learning Contract provided that the Complainant placed a patient in jeopardy because she failed to verify the patient's identity prior to performing a blood glucose

test. The Complainant told OCR that she disputed this finding, and affirmed that she had checked the patient's identity band prior to conducting the test. The Learning Contract further described the Complainant as failing to educate the patient on the procedure and requiring faculty assistance. The Learning Contract listed five items advising the Complainant of what points or skills needed improvement, among them, was an advisement that any further lack of compliance with patient safety would lead to dismissal.

On September XX, 2014, Interpreter Specialist emailed the Complainant notifying her that arrangements had been made for interpreters to be at the Hospital on the day (Friday) she is at her clinical placement. On that same day, the Associate Department Chair emailed the DSPS Director and explained that the interpreters for the agency that the Hospital contracts with needed to complete consent and paperwork requirements specific to health and safety. Interpreters also would have to be CPR certified. She further indicated that the Hospital expressed concerns about the liability of having an interpreter on the units as the interpreters would be functioning to support the Complainant and not patients. The DSPS Director responded that he was doing all he could to find interpreters through agencies however, it had been difficult to secure interpreters who met all of hospital's requirements which seemed unrealistic and outside of an interpreters role that, "an interpreter would ever step in and offer CPR." He therefore requested that the Complainant's clinical assignment be changed. The Associate Dean responded that it was not possible or reasonable to change the clinical assignment. When the Complainant returned for her second shift at the hospital on September XX, 2014, she was provided interpreters for conferences but not during the 12-hours of patient contact.

On October X, 2014, the Department Chair learned from the Hospital that it was not willing to waive the CPR requirement. On October X, 2014, the Complainant emailed the DSPS Director and Interpreter Specialist to ask whether she would have interpreters on the Hospital unit during her shift the next day. The Interpreter Specialist responded that DSPS had not received additional information from the Nursing Department clearing the interpreters to interpret during patient contact time. However, the Interpreter Specialist confirmed that the Complainant would continue to have interpreters for the conference times.

In an October XXX email, the Associate Dean told the faculty that "[Clinical Instructor], I am sure has been forewarned that she has a weak student and that she is not performing to usual clinical standards. Under normal circumstance such a student would be placed with a more challenging patient plus a very vigilant staff member to promote development of skills and other criteria that may be found to be deficient at this time. [Clinical Instructor] will no doubt be closely observing her performance as she is already on clinical probation."

The Complainant reported for her shift at the Hospital on October X, 2014, and was provided with interpreters only during the conference times. On October X, 2014, the Complainant emailed the Interpreter Specialist asking if the interpreters were still not cleared to work in the unit at the Hospital. On October X, 2014, the Interpreter Specialist responded to the Complainant stating that the interpreters still needed CPR certification.

On October XX, 2014, the Complainant reported for her clinical shift at the Hospital and was again provided with an interpreter during the conference times only. The Complainant stated to OCR that she missed essential information during the pre-conference because while the instructors were discussing the patient assigned to her she had to stop the interpreter and ask her to use a different form of sign language as she did not fully understand the interpreter's use of American Sign Language (ASL). The

interpreter switched to Pidgin Signed English (PSE) but by that time the instructors had finished their discussion and the only thing that the Complainant understood was that she should not pull out the chest tube. The Complainant also stated to OCR that once she reported to the floor of the Hospital unit she did not gather any information from the nurse during report or the instructors because she did not have interpreters with her during that time. During her shift, the Complainant was assigned to a patient with a chest tube. The patient asked to go to the bathroom and the Complainant assisted the patient and in the process the chest tube came out. The Complainant notified the staff nurse and she in turn notified the clinical instructor who was not there with the Complainant at the time. The Clinical Instructor spoke with the Complainant and told her that she should have had a nurse in the room with her before touching the chest tube at all. With respect to this incident, the Complainant told OCR that she was not informed about the prohibition about not moving patients with chest tubes because during the pre-conference, she did not understand the interpreter. The only thing that the Complainant understood was that she should not pull out the chest tube.

On October XX, 2014 the Complainant met with Lead Instructor and Department Chair, along with interpreter support, and was provided with a summary of her performance in support of the decision to dismiss her from the Nursing program. The summary included a listing of incidents in which the Complainant failed to demonstrate competency in labs and simulations, received low scores on exams, and did not demonstrate proper safety protocols in working with patients on two occasions (administering a glucose test and moving a patient with a chest tube). The Complainant did not return to either the Hospital or the College's classrooms after this meeting.

### **Analysis and Legal Conclusion**

To be admitted into the Nursing Program, a student is required to be able to hear at 30dB in each ear. Based on the evidence reviewed by OCR, the Nursing Program accepted the results of the Complainant's hearing test which identified that she could hear at 30dB in each ear with hearing aids, as evidence that she met the essential eligibility requirements for admission and participation in the Program. As such, the Complainant was admitted as an individual with a disability, namely mild to profound sensorineural bilateral hearing loss, who was qualified to participate in the Program.

Title II and Section 504 state that in determining whether a person has a disability that substantially impairs a major life activity, mitigating measures, such as a hearing aid, cannot be considered. On or about August XX, 2014, the Associate Dean spoke with the Complainant's audiologist and learned that with her hearing aids the Complainant can hear a person whispering in a low voice; however, she suffers from profound loss of hearing at higher frequencies such as that of a normal conversation and someone speaking in a high voice. The Complainant and DSPS also told faculty and staff in the Nursing Department on multiple occasions that even with her hearing aid, the Complainant's hearing was still impaired and she required accommodations. OCR found that the correspondence among the faculty of the Program showed that, despite this, they either inaccurately believed that if a student's hearing was marked on the assessment form as "within normal limits" for the Program's qualification of 30dB, then the student had no hearing impairment requiring accommodations, or they chose to disregard the statements of the audiologist, and incorrectly considered the Complainant's use of hearing aids in making the decision to deny her accommodations in various meetings held between June and September 2014.

As a result of not understanding the 30dB standard and disregarding the information provided by the Complainant's medical provider, the Complainant and DSPS, OCR found that Program staff incorrectly

concluded that the Complainant did not need accommodations or should be limited in the accommodations received, even though such accommodations had been approved and provided to the Complainant under the College's applicable policies for the prior courses which she had successfully completed at the College.

The College's process required that upon registering with DSPS, the Complainant initially meet with the DSPS counselors to discuss her accommodations, aids, and services. The Complainant first met with the DSPS counselors in August 2011 and annually thereafter. In or about the spring 2014, shortly after she received notice of her conditional acceptance into the College's Nursing Program, and continuing through the summer 2014, the Complainant met with DSPS and requested the following auxiliary aids and services, for which she had been previously approved by the College, to enable her to fully participate in the College's Nursing Program: closed-captioning of videos, testing accommodations, CART services, use of an assistive listening device, and interpreters. DSPS did not follow its normal procedures in 2014 to create an SEC for the Complainant; nevertheless, based on the OCR's review of relevant documents and interviews with DSPS staff, OCR found that the Complainant had been approved for and provided auxiliary aids and services which included interpreting, CART, note taking and testing accommodations, since 2011.

With respect to Complainant's receipt of specific accommodations during the fall 2014 semester, OCR's investigation revealed the following:

#### **CLOSED-CAPTIONING**

Based on documentation provided to OCR by the College and the Complainant, OCR found that the Complainant made at least four written requests and at least one oral request that all videos required for the course be closed captioned, including those from YouTube, the Nurse Server, and the Hospital. In specific, the Complainant and DSPS were in communication, as early as June X, 2014, about her request to have videos closed captioned. Similarly the documentation shows that DSPS communicated the need for access to the videos for closed captioning to the Program on or about June X, 2014. The Program required students to view videos from three sources: YouTube, the Nurse Server, and the Hospital's website.

First, students were required to view 28 YouTube videos, comprised of 196 minutes of course required content, before the start of the semester on August XX, 2014. DSPS received access to the videos on July XX, 2014, and the Complainant received these videos closed captioned between August XXXX and September X, 2014.

Second, the Program further required students to watch nine introductory videos, comprised of 170 minutes of course required content, located on the "Nurse Server" within the first week of school. The Complainant did not receive any of nine videos with closed captioning prior to her dismissal. On or about July XXXX and again on August XXXX, Nursing faculty suggested that instead of having these videos closed captioned, the Complainant could turn up the volume and follow along the video with written materials or guides. The Complainant tried to obtain access in the suggested manner but demonstrated to faculty and DSPS during a meeting on August XXXX that she was not able to hear content on videos by turning up the volume. The Complainant also notified DSPS by email on September XXXX stating that the faculty often questioned whether she watched the videos. The Complainant informed DSPS that although she had viewed the videos she was not able to fully understand the content due to the static and her inability to hear everything.

Finally, the Hospital required students assigned to its facility to complete a video based orientation before working at the Hospital. DSPS agreed that the Complainant should be provided closed captioned copies of the orientation videos. However, the Complainant was not provided closed captioned copies of the Hospital's orientation videos. Documentation does not show that anyone from the College ever asked the Hospital for access to the videos so that they could be closed captioned. Ultimately, the Complainant never received closed captioned videos for her orientation at the Hospital.

Accordingly, OCR found that the College failed to provide the approved accommodation of closed captioned videos on the Nurse Server and for the orientation at the Hospital.

### **CART SERVICES**

OCR found that as early as June X, 2014, the Complainant requested CART services for lecture and classroom settings. In addition to a number of documented meetings and email correspondence where the Complainant's request for CART is discussed between June and August 2014, on August XX, 2014, she submitted a detailed request for CART services with dates and times for the entire fall 2014 semester to DSPS. OCR reviewed e-mails between the Complainant and staff, and interviewed the Complainant and confirmed that the College provided the Complainant with all of the CART services that the Complainant requested.

### **TESTING ACCOMMODATIONS**

A student with a disability cannot be forced to forfeit instruction time in another class in order to receive an approved accommodation. OCR found that on August XX, 2014, DSPS approved the Complainant's request for additional testing in the amount of 1.5 times the allotted time. Shortly thereafter, on August XX, 2014, the Lead Instructor signed the document indicating the Complainant was to receive 1.5 times on exams. However, after receiving the approved accommodation, on August XX, 2014, the Lead Instructor told the Complainant she had to choose between receiving her additional time as an accommodation or missing the classroom lecture for the required math course that followed the exam/quiz. Based on the Lead Instructor's directive, the Complainant did not receive the accommodation that had been approved for her for seven quizzes/exams administered during the time the Complainant was in the Program. As a result of her scores on these quizzes/exams, the Complainant earned a 62% for her mid-term evaluation dated September XX, 2014.

In summary, the College allowed for the accommodation but only in a manner that would result in her missing instruction for another class. Accordingly, OCR found that the Complainant was denied the accommodation.

### **ASSISTIVE LISTENING DEVICE (ALD)**

OCR found that a number of personnel from the College suggested and encouraged the Complainant to request and use an ALD; however, as the time came for the Complainant to use the ALD, the same personnel expressed a number of reasons why it was not a viable option for the Complainant. For example, in a June XXX meeting the Interpreter Specialist suggested that Complainant use an ALD in the clinical setting to assist her. However, after learning that the nursing building was not equipped for ALD because of the lack of FM service, the record does not show that either the Associate Dean or the Lead Instructor informed the Complainant. In addition, the Complainant was informed by nursing faculty

during an August XXXX meeting, that use of the ALD in the clinical setting would not be possible because of their concerns regarding contamination in patient rooms. As a result, the Complainant was not able to use an ALD at any point in the Program or in the clinical setting. The Complainant was granted CART providers in the classroom which provided an effective alternative in that setting. However, in the lab and clinical settings the alternative provided, interpreters, was largely ineffective given that the Complainant's access to the interpreters was limited in the lab and Hospital settings. Accordingly, OCR found that the College denied the Complainant the use of an ALD.

### **INTERPRETERS**

OCR found that on June X, 2014, the Complainant informed DSPS that she would need interpreters for classroom and lab settings. In a June XX, 2014, email to the Complainant, the Interpreter Specialist stated that she and the DSPS Director had discussed the Complainant's request for interpreters during the lab settings, among other requests. On August XX, 2014, the Complainant submitted to DSPS a detailed request for auxiliary aids and services, which included requests for sign language interpreters for the entire semester during the specific days and times of the lab settings, as well as specific one-time events such as Boot Camp and Senior Center day, among others.

Although the Complainant had requested interpreters for the duration of the lab components of the Program and the documentation indicated that DSPS was processing her requests for the same, the faculty continued to discuss the need for the interpreters during those components with the Complainant and on August XX, 2014, the Associate Dean told her that she did not think they were necessary based on her misunderstanding of the impact of the Complainant's disability on her ability to hear. OCR found that this communication, among others, resulted in changes to the Complainant's approved accommodations based on her expressed preferences for communicating that limited her access to effective methods of communication in contravention of the requirements of Title II and Section 504.

OCR also found that during several labs, College instructors did not allow interpreter to interpret for her while she was interacting with her peers or demonstrating the required skills. According to the Interpreter Specialist, the instructors asked the interpreters to leave the lab and the interpreters then reported the occurrence to the Interpreter Specialist. The Interpreter Specialist told OCR that it took, "a couple of days in the nursing program to get that confusion worked out," but that ultimately she and the Director of DSPS clarified that the interpreters could be with the Complainant the entire lab period. The Complainant told OCR that as a result of not having her interpreters with her throughout the labs on various days, she "missed essential information and was not able to pass [assessments] on the first try."

With regard to her clinical assignment at the Hospital, the Complainant requested interpreters for the orientation, pre- and post-conferences and during the time she spent on the floor of the Hospital unit. Initially, the Complainant indicated that she did not want interpreter support for in patient contact both because Nursing faculty repeatedly stated that they believe the presence of interpreters constituted a breach of patient confidentiality and because in the College's Phlebotomy program the interpreters had been a distraction. On September XX, 2014, nursing faculty required her to have interpreters for the duration of her shifts at the Hospital; the Complainant agreed with this requirement.

However, the College then delayed provision of the services. OCR found that the process to identify the Hospital's requirements for interpreters took the College 20 days; meanwhile the Complainant spent four complete shifts, or forty-eight hours, on the Hospital unit with no access to the auxiliary aid that was deemed necessary. One of the shifts was her first Hospital shift on September XX, 2014; as a result of her

performance on that shift, the Complainant was placed on a Learning Contract by her clinical instructor for: (1) failing to verify the patient's identity prior to performing a blood glucose test; (2) needing faculty assistance to perform the procedure; and (3) failing to educate the patient on the procedure. For the subsequent three shifts the Complainant was provided with interpreters during conference times only; she was not provided any interpreters, or an effective alternative, during the 36-hours she was on the unit floor interacting with patients during her subsequent three shifts.

On or about September XX, 2014, the College realized that the requirements being imposed on the interpreters were complicated and extensive and that, as a result, it would not be able to secure the interpreters in a timely way. In light of that realization, on the same day, the DSPS Director proposed changing the Complainant's placement but nursing program faculty stated that would not be possible given the extensive orientation process for any alternative placements and the hourly requirements imposed by the Board of Registered Nursing. At that point, there was no further discussion with the Complainant about any other options. As such, the interactive process was effectively terminated, and the Complainant was left to manage her clinical assignment in the absence of any alternatives for effective communication, which impacted her performance and factored into her dismissal from the Program.

Accordingly, OCR found that the College failed to provide the Complainant with interpreting services deemed essential during her clinical assignment. By October XXXX the Complainant was only provided with interpreters during conference times and not during the time she was on the Hospital unit.

The Complainant told OCR that, on October XX, 2014, she did not obtain essential information from the instructors about her patient during the pre-conference discussion because she did not understand the interpreter, who was using a version of sign language that she did not understand, so she missed the instructor's entire discussion about her patient.<sup>1</sup> OCR found that the College failed to provide interpreters and then failed to engage in an interactive process with the Complainant to identify an effective alternative that would have allowed her to have equal access the Program.

Therefore, OCR finds that the College violated Section 504 and Title II when it failed to ensure that the Complainant received her approved accommodations of closed captioning, testing accommodations, assistive listening device, and when it failed to provide interpreters in the clinical setting and engage in the interactive process with the Complainant regarding an effective alternative, when they were not provided.

**Allegation 2: Whether the Recipient treated the Complainant differently on the basis of disability in its supervision of the Complainant and when it dismissed Complainant from the Nursing Program after her clinical performance was assessed according to a different standard than non-disabled students.**

## Legal Standards

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<sup>1</sup> The Complainant told OCR that, on October XX, she did not obtain essential information from the instructors about her patient during the pre-conference discussion because she did not understand the interpreter, who was using a version of sign language that she did not understand, so she missed the instructor's entire discussion about her patient. However, the Complainant informed OCR that at the time she did not advise the faculty or staff that she was not able to gather key information because she did not understand the interpreter. The Complainant stated to OCR that different interpreters were provided throughout her time in the Program, including during the conference times at the Hospital.

Under the Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), 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 which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. Under 34 C.F.R. §104.4(b)(1) and 28 C.F.R. §35.130(b)(1) a recipient public college may not, directly or through contractual, licensing, or other arrangements, on the basis of disability, deny a qualified disabled individual the opportunity to participate in or benefit from an aid, benefit, or service.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR first examines whether there is direct evidence of discriminatory treatment on the basis of disability. Absent that, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the College provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the College's actions were based on the individual's disability.

This allegation presents two questions. The first relates to whether the College treated the Complainant differently on account of her disability. The second question relates to whether the Complainant was dismissed according to a standard different from her peers.

#### **Different Treatment of the Complainant Based on her Disability**

The Complainant alleged that she was treated differently because of her disability and that treatment resulted in her dismissal from the Program. OCR first considered any direct evidence of discriminatory treatment of the Complainant on the basis of her disability. OCR found that the faculty made the following disability based statements regarding the Complainant. In a July XXXX email the Associate Dean described her meeting with the Complainant two days prior and noted derisively that the Complainant missed parts of the conversation and was seeking clarification. She told the faculty that the Director of DSPS mentioned "this is a behavior pattern in students with hearing disabilities I can appreciate her concerns and so I am more than happy to continue 'boundary setting' with her and reiterate to her that she cannot pester faculty with her concerns at this time as all will be revealed in due course." Similarly, in a July XXXX response to receiving resources from DSPS about working with deaf and hard of hearing students, the Department Chair emailed the others stating, "This is going to be interesting. Just like our ESL students, medical terminology will have to be spelled out. Are we going to get interrupted and have to slow down when we use such words?"

The Complainant told OCR that she felt the faculty were watching her more closely than her peers and documenting everything she did or said. Again, OCR looked first at any direct evidence of discriminatory treatment and found that lead College personnel made the following disability based statements in email correspondence about the Complainant and the likelihood of her success in the program. For example, the Lead Instructor stated in a July XX, 2014 email to the other faculty, "we will be documenting our communication with her in a clear and concise manner as we work towards setting appropriate boundaries;" (2) in an August XXXX email to the Lead Instructor, the Associate Dean discussed the College's decision to use the "stepwise approach" allowing the Complainant to only use her hearing aids and then make adjustments based on how unsatisfactory that might be, she stated,

“the feedback is for u all to document and photograph as we should identify areas where she may be unsafe and need more assistance”; (3) in an October XXX email the Associate Dean told the faculty that “[Clinical Instructor], I am sure has been forewarned that she has a weak student and that she is not performing to usual clinical standards. Under normal circumstance such a student would be placed with a more challenging patient plus a very vigilant staff member to promote development of skills and other criteria that may be found to be deficient at this time. [Clinical Instructor] will no doubt be closely observing her performance as she is already on clinical probation.” These statements demonstrated that well before the start of the semester on August XX, 2014, the Nursing faculty anticipated having “safety” concerns about the Complainant and that they felt it was important to document their interactions with her as well as her performance in the clinical setting.

OCR also considered other evidence that the Complainant was treated differently than non-disabled individuals under similar circumstances, and whether the treatment resulted in the denial or limitation of services, benefits, or opportunities. OCR reviewed the various forms through which the faculty provided the Complainant with feedback about her performance, including the anecdotal notes and clinical evaluation tool, and at least three entries included feedback on items not related to her performance. In addition, notes from two meetings with the Complainant show that the faculty reviewed their expectations of her performance prior to her even beginning the Program. The Associate Dean was asked about one of her conversations with the Complainant regarding expectations for the Program but she told OCR that she did not recall that as she and the Complainant had so many meetings. However, when the Associate Dean was asked whether students were individually spoken to, she told OCR that in general students are made aware of expectations for the Program via the information provided online. OCR did not speak with other students or request other data which provided evidence about whether the faculty had similar meetings with other students.

In sum, OCR’s review of the data revealed that the Program faculty made disability based comments and decisions about the Complainant’s ability and likelihood of success, described efforts to document their interactions with her, and documented two meetings with the Complainant where expectations of her performance were discussed prior to the start of the semester. These actions and statements raise concerns and provide an inference of disability-based different treatment; however, to complete the investigation, OCR would need to speak with other students, request additional data about whether the faculty had applied more exacting scrutiny to the Complainant as compared to other students.

The Complainant further asserted to OCR that her dismissal was the result of the College’s application of a different standard used to assess her performance in the Program. The College stated that the Complainant was dismissed for documented violations of safety standards which are applied to all students and can result in the dismissal of any student. OCR reviewed the evidence to determine whether the legitimate non-discriminatory reasons cited by the College were pretextual.

On October XX, 2014, the Complainant reported for her clinical shift at the hospital and was assigned to a patient with a chest tube. The patient asked to go to the bathroom, and the Complainant moved the patient and in the process the chest tube came out. Based on this incident, the Complainant met with the Lead Instructor and Department Chair and was dismissed from the program. The Complainant told OCR that her performance was negatively evaluated because she had been denied necessary aids and accommodations. Any “safety violations” identified were a direct result of the College not providing her necessary accommodations, such as adequate interpreters in the clinical setting.

The College provided OCR with a chart of all students dismissed from the Nursing program between the fall 2014 and spring 2017 semesters for safety violations committed in a hospital or clinical setting. The chart lists a total of sixteen students who were dismissed for safety issues ranging from being unable to maintain a safe clinical practice environment to demonstrating poor judgment and professionalism to communication related issues, among others. The Complainant was the only student dismissed during the fall 2014 semester and the only one of the sixteen dismissed students who was registered with DSPS. The Complainant's dismissal was described in the chart as "unsatisfactory clinical performance; unsafe clinical practice; breeches of communication and professional standards of nursing practice." Standing alone, the performance issues cited in support of the Complainant's dismissal from the Program do not provide sufficient evidence that the College assessed her according to a different standard especially given the fifteen other recent dismissals on similar grounds.

In order to make a determination with regard to whether the College's dismissal of the Complainant was pretextual, OCR would need to gather further information regarding these other dismissals; including, among other things, the notes recorded for each of the students dismissed on safety grounds and information about the specific incidents surrounding the safety violations for which other students were dismissed. Absent this information, OCR cannot conclude that the Complainant was dismissed based on her disability or because of animus based on disability. However, as related above, OCR found sufficient evidence that the College failed to provide her necessary academic aids and adjustments, which contributed to her dismissal.

As part of the Resolution Agreement described below, the College agreed to take actions that will resolve OCR's concerns regarding possible different treatment of the Complainant. For this reason, OCR did not complete its investigation of this allegation or reach conclusions as to whether the College violated Section 504 or Title II in connection with this issue.

## **Conclusion**

To address the violations found and compliance deficiencies identified during the investigation, the College, agreed to enter into the enclosed resolution agreement (agreement), which is aligned with the complaint allegation[s] and the findings and information obtained by OCR during its investigation. The agreement requires the College to: (1) reimburse the Complainant for Program-related expenses; (2) review and revise DSPS notices, policies, and procedures; (3) provide written guidance for DSPS and nursing department personnel addressing auxiliary aids and services for deaf and hard of hearing, or other sensory impaired students; and (4) train DSPS personnel, as well as, College and Nursing department administrators and staff.

Based on the commitments made in the enclosed agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of the Agreement until the College is in compliance with Section 504/Title II and the implementing regulations.

OCR's determination in this matter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

Please be advised that the College may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another 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 the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorney, Christina Medina at (415) 486-5548.

Sincerely,

/s/

Katherine Riggs  
Acting Team Leader