



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION II

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November 27, 2012

Matthew Goldstein
Chancellor
The City University of New York
535 East 80th Street
New York, New York 10021

Re: Case No. 02-12-2058
City University of New York - Queensborough Community College

Dear Chancellor Goldstein:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), in the above-referenced complaint filed against the City University of New York - Queensborough Community College (the College). The complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with the following academic adjustments/auxiliary aids in her Psychology SS-520 course (the Course) during the spring 2011 semester: (a) extended time on tests; (b) note-taking services; and (c) use of a tape recorder (Allegation 1). The complainant further alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with the following academic adjustments/auxiliary aids in the Course during the spring 2012 semester: (a) extended testing time; (b) note-taking services; (c) use of a tape recorder; and (d) a different Course professor and removal of a D- grade that she received on her first exam in the Course (Allegation 2).¹

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public

¹With respect to Allegation 2(d), the complainant originally alleged that the College treated her differently from non-disabled students by requiring that she retake the Course with the Course professor (the Professor) and denying her the opportunity to retake the first exam of the Course, during the spring 2012 semester. During the course of OCR's investigation, the complainant clarified her allegation to state that the College failed to accommodate her disability.

entities. The College is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and College staff. OCR also reviewed documentation that the complainant and the College submitted.

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. At the postsecondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. In reviewing allegations regarding the provisions of academic adjustments or auxiliary aids, OCR considers whether: (1) the student provided adequate notice to the recipient that the academic adjustment or auxiliary aids were required; (2) the academic adjustments or auxiliary aids were necessary; (3) the appropriate academic adjustments were provided; and (4) the academic adjustments or auxiliary aids were of adequate quality and effectiveness. *See also* the ADA, at 28 C.F.R. § 35.130(b)(7).

OCR determined that students who seek academic adjustments or auxiliary aids must submit the request, with supporting medical documentation, to the College's Office of Services for Students with Disabilities (OSSD). OCR determined that it is the responsibility of OSSD to review requests for academic adjustments and auxiliary aids, and provide a student with an "Accommodation Letter" listing the academic adjustments and auxiliary aids that have been approved. Once a student receives an Accommodation Letter, it is the student's responsibility to provide a copy of the Accommodation Letter to each professor.

Allegation 1

The complainant alleged that the College discriminated against her, on the basis of her disability,² by failing to provide her with the following academic adjustments/auxiliary aids in the Course during the spring 2011 semester: (a) extended testing time; (b) note-taking services; and (c) use of a tape recorder. OCR determined that the complainant initially enrolled in the Course for the spring 2011 semester on February 2, 2011. OCR further determined that on or about March 25, 2011, seven weeks into the semester, the complainant identified herself to OSSD as a student with a disability, and requested extended testing time, note-taking services, and use of a tape recorder as academic adjustments and auxiliary aids for the Course.

During the course of its investigation, OCR determined that on or about December 19, 2011, the complainant filed an internal grievance with the College's Affirmative Action, Pluralism, and Compliance Diversity Officer (the AAO), raising the same allegations as Allegations 1(a), (b), and (c) of her complaint filed with OCR.³ OCR determined that the AAO conducted an investigation between December 19, 2011, and February 2, 2012. OCR determined that the

² The complainant is

(b)(7)(C)

³ In her grievance, the complainant also alleged that the College had subjected her to retaliation.

AAO submitted a report outlining her investigation and findings to the College's Interim President on February 2, 2012, and the Interim President upheld the AAO's findings in a letter, dated February 21, 2012.

In accordance with OCR's *Case Processing Manual*, when the same complaint allegations have been addressed through a College's internal grievance procedures, OCR generally will not proceed with a *de novo* investigation of those allegations; instead, OCR reviews the results of the internal investigation and determines whether all allegations were investigated, appropriate legal standards were applied, and any remedies secured met OCR's standards.

The AAO determined that in an Accommodation Letter, dated March 28, 2011, the OSSD stated that it had approved the complainant to receive extended (double) time on exams and note-taking services for the Course. The AAO learned from the Professor that the complainant had not submitted the Accommodation Letter to the Professor or orally requested academic adjustments or auxiliary aids in the Course. The AAO further determined that OSSD did not state in the Accommodation Letter that it had approved the complainant to audio record lectures in the Course. Based on her investigation, the AAO concluded that the Professor did not discriminate against the complainant on the basis of her disability.

OCR determined that the AAO's internal investigation and findings adequately addressed Allegations 1(a) and (b), and that appropriate legal standards were applied.⁴ Therefore, OCR will take no further action with respect to the complainant's allegations that the College discriminated against her, on the basis of her disability, by failing to provide her with extended time and note-taking services during the spring 2011 semester.

OCR determined that the AAO's investigation did not completely address Allegation 1(c); i.e., whether the College discriminated against the complainant, on the basis of her disability, by failing to provide her with the use of a tape recorder as an auxiliary aid in the Course during the spring 2011 semester. OCR determined that on March 25, 2011, the complainant requested that OSSD grant her "permission to tape record lectures" as an auxiliary aid. OCR determined that the Accommodation Specialist did not include the use of a tape recorder during the Course as an auxiliary aid in the Accommodation Letter, but neither did he specifically deny the use of a tape recorder as an auxiliary aid. Rather, instead of making a decision regarding the request as required by the College's policy, the Accommodation Specialist advised the complainant that she should speak with the Professor about granting this request.⁵

The Accommodation Specialist stated that he told the complainant that if she had any concerns after speaking to the Professor about tape recording, or if the Professor resisted the request, she should immediately return to OSSD. The Accommodation Specialist informed OCR that if this

⁴ Although the complainant asserted that the Professor rebuffed her attempts to give her the Accommodation Letter on two occasions during the spring 2011 semester, OCR and the AAO did not find, nor did the complainant provide, evidence establishing that the complainant submitted the Accommodation Letter to the Professor or requested that the Professor provide her with extended time and/or note-taking services while she was enrolled in the Course during the spring 2011 semester.

⁵ The Accommodation Specialist stated that he informed the complainant on March 28, 2011, that it was possible to audio record lectures as an accommodation, but explained that based on his experience, if a student approaches a professor with a request to tape record lectures, he/she will get "some resistance."

had happened, the Director could have reached out to the Professor on the complainant's behalf, or OSSD could have arranged for the complainant and the Professor to enter into an agreement whereby the Professor would have allowed tape recording on the condition that the complainant destroy the tape after the Course concluded. The Accommodation Specialist stated that the complainant never informed OSSD of any concerns about receiving tape recording in the Course after March 28, 2011.

The complainant denied that the Accommodation Specialist advised her that she could return to OSSD if the Professor refused her request. The Accommodation Specialist's contemporaneous contact notes, dated March 28, 2011, state that the complainant "will request permission to tape record on her own;" however, they do not state that the complainant had the option to return to OSSD if the Professor refused her request.

OCR determined that the complainant stopped attending classes for the Course after April 4, 2011. The complainant alleged that she stopped attending the course for disability-related reasons; namely, she stated that she could not handle the workload due (b)(7)(C)

(b)(7)(C)

Based on the above, OCR determined that it was the Accommodation Specialist's responsibility to assess whether tape recording in the Course was a necessary auxiliary aid for the complainant; however, he instead left that determination to the Professor. Although the Accommodation Specialist asserted that the complainant had the option to return to OSSD if the Professor denied the complainant's request, he did not provide, nor did OCR find, evidence to support this assertion. Regardless, OCR determined that it was the Accommodation Specialist's responsibility to make the determination on behalf of the College.

On November 15, 2012, the College voluntarily entered into the attached resolution agreement to resolve Allegation 1(c).

Allegation 2

The complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with the following academic adjustments/auxiliary aids in the Course during the spring 2012 semester: (a) extended time on exams; (b) note-taking services; (c) use of a tape recorder; and (d) a different Course professor and an opportunity to retake the first exam of the Course. As stated above, OCR determined that after April 4, 2011, the complainant stopped attending the Course during the spring 2011 semester. On November 9, 2011, the complainant received a grade of incomplete (INC) for the Course.⁶ OCR determined that because the College did not grant the complainant the INC grade until November 9, 2011, it granted her an additional semester (i.e., until the end of spring 2012) to complete her outstanding assignments in the Course, and obtain a letter grade.⁷ OCR determined that the complainant was

⁶ According to the College's 2011-2013 College Catalog, an INC is a grade "[a]ssigned to students who are doing work of passing quality in a course and who have been granted additional time by the instructor to complete coursework."

⁷ The Chairman of the Department of Social Sciences (the Chairman) stated that an INC grade may be changed to a letter grade if a student completes the missing coursework by the end of the subsequent semester; otherwise, the INC

not officially enrolled in the Course during the spring 2012 semester. The Professor stated, however, that she invited the complainant to "sit in" on classes so that she would be fully prepared to take the exams that she had missed the previous year. OCR determined that the complainant began attending classes in the Course in or around January 2012, at the beginning of the semester, and attended 11 of 14 classes during the spring 2012 semester.

OCR determined that in an electronic mail message (email), dated January 31, 2012, the AAO informed the complainant that she should contact OSSD and follow its procedures for receiving accommodations and scheduling exams for the Course during the spring 2012 semester. OCR determined that the complainant did not resubmit her request for academic adjustments and auxiliary aids in the Course to OSSD, or submit a new request to OSSD. Nevertheless, the Director of OSSD (the Director) informed OCR that the Accommodation Letter for the complainant for the Course, dated March 28, 2011, was still in effect for the spring 2012 semester, because his office viewed this work as a continuation of the spring 2011 semester. Accordingly, the complainant was approved to receive extended testing time and note-taking services as academic adjustments for the spring 2012 semester.

Allegation 2(a)

With respect to Allegation 2(a), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide extended time on tests as an academic adjustment during the spring 2012 semester. The College asserted that it had approved the complainant to receive, and was prepared to provide the complainant with extended time on exams during the spring 2012 semester; however, the complainant failed to sit for any exams. The complainant acknowledged that she did not take the Course exams, but stated that the College gave her insufficient time to prepare.⁸

OCR determined that the College notified the complainant that it had scheduled the complainant's first re-test for April 9, 2012, despite not having received a letter from the complainant's physician; however, the complainant informed the College that she was "not available" and did not attend. OCR determined that the Dean then rescheduled this exam for April 28, 2012, but the complainant again did not attend. OCR determined that on May 8, 2012, the Dean again attempted to reschedule the exam with the complainant. OCR determined that the Dean ultimately rescheduled the remaining exams for May 19, 23, and 29, 2012, respectively, but that the complainant did not attend any of these exam sessions.

will revert to an FIN, which is the equivalent of receiving an F in the course. OCR determined that the College's computer system automatically changed the complainant's grade in the Course to an FIN after the fall 2011 semester; however, the Chairman, Professor, and Dean stated, and the complainant confirmed, that had the complainant completed her assignments for the Course by the end of the spring 2012 semester, her grade would have been changed to a letter grade.

⁸OCR determined that in a letter, dated March 23, 2012, the Director requested that the complainant provide an updated letter from her treating physician, stating that she was cleared to resume her "academic studies prior to making arrangements to take any makeup exams." OCR determined that the complainant never provided such medical documentation. The complainant stated that although the College later rescinded the condition that she provide medical documentation from her doctor confirming her fitness, she only had two days to prepare for her first exam on May 19, 2012.

Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's assertion that the College failed to provide the complainant with sufficient time to prepare for her exams. Further, the Professor, Chairman, and Dean stated, and the complainant confirmed, that had the complainant taken the exams, she would have received extra time. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by failing to provide her with extra time on exams as an academic adjustment/auxiliary aid during the spring 2012 semester.

Allegation 2(b)

With respect to Allegation 2(b), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to provide her with note-taking services as an auxiliary aid during the spring 2012 semester. The Professor stated that she did not provide the complainant with a note-taker because the complainant never asked for this auxiliary aid. The complainant acknowledged that she never specifically discussed the provision of note-taking services with the professor. OCR determined that during the spring 2012 semester, the complainant neither showed the Accommodation Letter to the Professor, nor did she complain to OSSD that the Professor was not providing note-taking services. The complainant did not provide, nor did OCR find, sufficient evidence indicating that the complainant placed the Professor on notice that she required note-taking services or requested that the College provide her with note-taking services during the spring 2012 semester. Based on the above, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College discriminated against her, on the basis of her disability, by failing to provide her with note-taking services during the spring 2012 semester.

Allegation 2(c)

With respect to Allegation 2(c), as previously discussed, OCR determined that during the spring 2011 semester, OSSD did not conduct an individualized assessment of the complainant's request to tape record lectures as an auxiliary aid. OCR determined that despite the fact that the complainant continued to complain about not receiving tape recording as an auxiliary aid, OSSD took no action in response.⁹

On November 15, 2012, the College voluntarily entered into the attached resolution agreement to resolve Allegation 2(c).

Allegation 2(d)

With respect to Allegation 2(d), the complainant alleged that the College discriminated against her, on the basis of her disability, by failing to allow her to complete the Course with a different Course professor during the spring 2012 semester and remove a D- grade that she received on her first exam in the Course, as academic adjustments. OCR determined that on November 9,

⁹OCR determined that in an email, dated January 31, 2012, the complainant informed the AAO that she was "still uncomfortable with [the Professor] especially since she does not allow electronics in class and I desire to record the class."

2011, the College, with input from OSSD, changed the complainant's grade from WU to INC as an accommodation request, but required that the complainant complete the Course with the Professor and keep the D- grade that she previously received on the first exam of the Course in spring 2011. The complainant informed OCR that on or about the same date, she complained to the OSSD Director about being required to take the Course with the Professor, and not being allowed to retake the first exam of the Course, but the OSSD Director told her that receiving the INC grade was a "big win."

OCR determined that in an email to the AAO, dated December 1, 2011, the complainant requested that she be allowed to take the Course with a different professor and without imposing the Professor's D- grade, as academic adjustments.¹⁰ OCR determined that the complainant reiterated her request in a second email to the AAO on January 31, 2012, copying the Associate Dean of Student Affairs, the Assistant Dean for Academic Operations, the Chairman of the Social Sciences Department, and the Professor.

In response to the complainant's request that she be allowed to finish the Course with a different professor, the AAO stated that she interviewed the Interim Vice President for Academic Affairs (the Vice President) and the OSSD Director about the College's policy. The Vice President advised the AAO that the College's policy is that a student may only switch a section or class at the beginning of a semester as a reasonable accommodation. The OSSD Director advised the AAO that students are required to complete courses in which they receive INCs with the original professors. Based on this information, the AAO concluded that the complainant was not entitled to switch professors, stating that "[t]he switching of a professor or class section as an accommodation is done at the beginning of a semester and not at the end." The OSSD Director informed OCR that the "requirement" that the complainant was supposed to complete the Course with the same professor, "was not within his domain." The OSSD Director did not provide any information indicating that he or anyone from OSSD treated the request as a request for an academic adjustment. OCR determined that the complainant completed the Course with the Professor during the spring 2012 semester.

OCR determined that the Student Catalog (pages 2 & 231), states that the AAO is the 504 Coordinator, and that "employees and students who have an inquiry or concern regarding requests for reasonable accommodations may contact the Affirmative Action/Compliance Officer, who also acts as the Section 504 Coordinator." Accordingly, OCR determined that the AAO was obligated to forward the complainant's request to OSSD, the office responsible for reviewing and making decisions regarding academic adjustments, or to at least advise the complainant that she should contact OSSD to make any requests for academic adjustments.¹¹ OCR determined that the College did not review this request to determine whether it constituted a necessary accommodation.

¹⁰ In the email, she stated: "... please consider this a formal ... request for an accommodation under the ADA and 504. Specifically, I am requesting that I be allowed to take the course without imposing [the Professor's] D- grade and with a different instructor."

¹¹ OCR determined that although the AAO, in an email dated January 31, 2012, informed the complainant that she should contact the OSSD and follow its procedures for receiving accommodations and scheduling exams for the Course, this email only related to the implementation of academic adjustments already written into her Accommodation Letter, not new requests for accommodations.

On November 15, 2012, the College voluntarily entered into the attached resolution agreement to resolve Allegation 2(d).

During the course of the investigation, OCR also determined that the Professor treated the complainant differently from non-disabled students in the Course with respect to the opportunity to re-take tests. OCR determined that the syllabus for the Course¹² stated that if a student was unhappy with his/her score the first time he/she took an exam, he/she could sit for a re-test. The syllabus further stated that students were given the option to re-test for the first three exams offered during the semester (Exams 1, 2, and 3, respectively), and that the higher of the two scores would then “count twice as much as the lower grade in calculating [a student’s] term average.”

OCR determined that in order for the complainant’s grade to change from an INC to a letter grade, the Professor required that by the end of the spring 2012 semester, the complainant take Exams 2, 3, and 4, since she had not completed these exams during the spring 2011 semester. The Professor explained that she considered these to be “re-tests” because the complainant had missed the original exams when she took the course in the spring 2011 semester. OCR determined that in an email, dated May 18, 2012, the complainant relayed her concern to the Dean that the Professor treated Exams 2 and 3 as re-tests, and that she did not allow her to take the original exams in addition to the re-tests. OCR determined that the Professor continued to only permit the complainant to take Exams 2 and 3 one time each.

OCR determined that, in accordance with the Course syllabus, other students registered for the Course during the spring 2011 semester were given the opportunity to take Exams 2 and 3 twice each. The complainant was unable to complete the Course during spring 2011 for disability-related reasons, and stopped attending classes in the beginning of April 2011; therefore, she missed the original tests for Exams 2, 3, and 4. The complainant received an INC in November 2011 to complete the portions of the Course that she had missed. Therefore, the College should have permitted her to step back into the Course at the point she had left, and the Professor should have afforded the complainant the opportunity to take the exams and the retests and then average the grades, as had been done for the other Course students.

On November 15, 2012, the College voluntarily entered into the attached resolution agreement to resolve this compliance concern.

OCR will monitor implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation.

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.

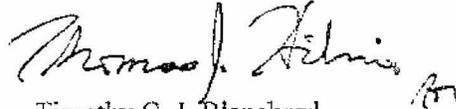
¹² The syllabus is entitled “FAQs and R & R–SS 520.”

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to preserve protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter 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 constitute an unwarranted invasion of personal privacy.

If you have questions or concerns regarding the determination in this matter, please contact Anthony Spinelli, Compliance Team Investigator, at (646) 428-3789 or Anthony.Spinelli@ed.gov; David Hensel, Compliance Team Attorney, at (646) 428-3778 or David.Hensel@ed.gov; or Nadja Allen Gill, Compliance Team Leader, at (646) 428-3801 or Nadja.R.Allen.Gill@ed.gov.

Sincerely,



Timothy C. J. Blanchard
Regional Director

cc:

(b)(7)(C)

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Enc.

RESOLUTION AGREEMENT
City University of New York
Queensborough Community College
Case No. 02-12-2058

In order to resolve the compliance concerns identified in Case No. 02-12-2058, Queensborough Community College (the College) assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the actions detailed below pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35.

Action Item 1:

Within 5 days after this agreement has been executed, the College will offer the complainant an opportunity to retake Psych 220 (formerly SS-520; and hereinafter referred to as the Course) during the Winter 2012, Spring 2013, or Summer 2013 sessions. If the complainant decides to retake the Course, tuition for the Course will not be charged to the complainant. This offer to retake the Course is to enable her to convert the incomplete ("INC") grade she received in the Course during the Spring 2011 semester to a letter grade. The complainant will retake the Course with a different professor.

In order to ensure that there will be space in the class, complainant must notify the College in writing, prior to the start date for student registration, that she intends to enroll in the class. The College will advise the complainant of when the Course will be offered during the Winter, Spring, and Summer semesters as soon as the schedule becomes available, and at least ten days before it is open for registration. Complainant must notify the College, in writing, that she would like to enroll in the class at least seven days before the Course is open for registration (complainant will be informed of this exact date when she is sent the schedule).

All written notification should be directed to the VP of Academic Affairs, copying the Chair of the Social Sciences Department and the Director of Labor Relations on the correspondence. Notification should be sent via certified mail and/or electronic mail. Notification via electronic mail must be sent using the College's email system (i.e., via her Tigermail address) using the tracking option of "Request a Delivery Receipt." If the College does not receive written notification at least seven days before registration opens, the College cannot guarantee the complainant a spot in the class.

The complainant will be treated as if this is her first time taking the Course with respect to taking the same examinations, attending lectures, and carrying out the same assignments as the other students enrolled in the Course. Any requests for accommodations or deviations from the policies of the College or the Instructor based on disability must be submitted to and processed by the Services for Students with Disabilities ("OSSD") office, in accordance with the OSSD procedures. OSSD may request additional documentation in order to ensure that complainant receives necessary and proper accommodations to complete the Course. If the complainant does not provide additional

documentation, OSSD will rely on the documentation the complainant previously provided to support her need for accommodations.

The complainant will have an "INC" on her transcript until she has satisfied the requirements for completion of the Course. If the complainant has (or has not) satisfied the requirements for completion of the Course, as determined by the Professor in whose class she is enrolled, by the last date that final examinations are offered, the complainant's current "INC" grade in the Course will be converted to the final grade she has earned for that semester.

If Complainant does not elect to enroll in the Course during the Winter 2012, Spring 2013, or Summer 2013 sessions, the complainant's current "INC" grade for the Course will be converted to an "FIN" on her transcript. The complainant will be advised that if she requires additional time to satisfy the requirements of the course beyond the final day of class she must process her request through the appropriate College channel as soon as she becomes aware of such a need and a decision will be rendered in accordance with College policy.

Reporting Requirements:

- a) Within seven days after this agreement has been executed, the College will provide OCR with documentation demonstrating that it has offered the complainant an opportunity to retake the Course during the Winter 2012, Spring 2013, or Summer 2013 sessions, and will provide documentation of the complainant's response, if any, within five days after the College's receipt of such response. The College will provide Complainant with the terms of her enrollment, as described above, in writing.
- b) If complainant elects to take the Course during the Winter 2012, Spring 2013, or Summer 2013 sessions, within 30 days after the first day of classes of that semester, the College will provide OCR with documentation showing the date(s) that the lectures, assignments, and exams will be offered if such information is available from the instructor. (It is understood that the instructor may not have determined the dates that assignments and exams will be offered within that time frame. If so, the College must provide the information as soon as it becomes available, and must update OCR on its status every two weeks, beginning 30 days after the first day of classes, until it can provide such information). Any accommodations granted to the complainant as of this date will also be included in the documentation provided to OCR. It is also understood that the instructor retains the right to alter these dates, as determined in his or her discretion. The College will ask the instructor advise it of any changes and it will advise the OCR as soon as it becomes aware of such changes.
- c) The College will provide OCR with a narrative description of the OSSD's determinations regarding any applications made by the complainant for accommodations, including any requests for extra time on exams, notetaking services, and tape recording of lectures, as well as any meeting minutes or similar documentation explaining the reasons for the determinations.

Action Item 2:

By November 30, 2012, the College will provide training to all administrators, faculty, and staff at the College responsible for processing requests and/or providing academic adjustments and/or

auxiliary aids for students with disabilities; including, but not limited to OSSD staff, the College's Chief Diversity Officer, the Associate Dean of Student Affairs, and the Course professor for the complainant's spring 2011 semester. The training will include a discussion of the College's obligation to provide qualified individuals with disabilities with any academic adjustments and/or auxiliary aids, in accordance with the regulations implementing Section 504 and the ADA; prohibitions against discrimination on the basis of disability and retaliation; and the College's process for reviewing and responding to requests for academic adjustments and/or auxiliary aids. Special emphasis will be given to the requirement that only OSSD and/or other designated College staff with the appropriate expertise and training may review and make determinations in response to requests for academic adjustments and auxiliary aids; and further, that this responsibility must not be delegated to individuals, including professors, who are not authorized to make such determinations, although faculty and academic administrators may be consulted regarding whether a particular accommodation is consistent with program requirements. Further, special emphasis will be given to the procedure for documenting decisions regarding all requests for academic adjustments and auxiliary aids.

Reporting Requirement: By December 12, 2012, the College will provide documentation to OCR demonstrating that training was provided in accordance with Action Item 2 above; including the name and credentials of the trainer, the date(s) of the training, copies of any training materials distributed, and a list of attendees.

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the College has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§104.43 and 104.44, and the ADA, at 28 C.F.R. §35.130, which were at issue in this case. The College also understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§104.43 and 104.44, and the ADA, at 28 C.F.R. §35.130, which were at issue in this case. In addition, the College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this agreement. Before initiating administrative enforcement (34 C.F.R. §§100.9 and 100.10), or judicial proceedings to enforce this agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

11/15/2012
Date

Liza J. Larico
Liza J. Larico
Dean,
Human Resources and Labor Relations
City University of New York
Queensborough Community College