



U.S. Department of Justice

*United States Attorney
Southern District of New York*

VOLUNTARY COMPLIANCE AGREEMENT

between

THE UNITED STATES OF AMERICA

and

THE CITY UNIVERSITY OF NEW YORK

WHEREAS, Title II of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12131 *et seq.*, prohibits a public entity from discriminating against any qualified individual on the basis of that disability by excluding the individual from participation in or denying such individual the benefits of the services, programs, and activities of that public entity, 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a);

WHEREAS, the ADA further provides that a public entity must make reasonable modifications to its policies, practices, and procedures when the modifications are necessary to avoid discrimination on the basis of disability unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the services, programs or activities it provides, 28 C.F.R. § 35.130(b)(7)(i);

WHEREAS, the ADA further requires a public entity to take appropriate steps, including where necessary the furnishing of appropriate auxiliary aids and services, to ensure that communications with participants with disabilities are as effective as communications with others, 42 U.S.C. § 12132; 28 C.F.R. § 35.160(a)(1), (b)(1);

WHEREAS, a public entity must give primary consideration to the request of an individual with a disability when determining whether a particular auxiliary aid or service is necessary, 28 C.F.R. § 35.160(b)(2), and administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, *id.* § 35.130(d);

WHEREAS, a public entity, in providing any aid, benefit, or service, either directly or through a contractual, licensing, or other arrangement, may not deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service, or provide different or separate aids, benefits, or services than provided to others unless necessary to provide qualified individuals with disabilities with aids, benefits, or services that are as effective as those provided to others, *id.* § 35.130(b)(1);

WHEREAS, the ADA further provides that a public entity is not required to take any action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens, 28 C.F.R. § 35.164;

WHEREAS, the ADA further authorizes the United States Department of Justice to investigate alleged violations of Title II, and to undertake reviews of compliance of covered entities pursuant to 42 U.S.C. §§ 12133, 12134(a); 29 U.S.C. § 794a(a)(2); 28 C.F.R. §§ 35.170-35.174;

WHEREAS, the United States Attorney's Office for the Southern District of New York (the "United States") received a complaint from a student with a vision-related disability (the "Complainant") filed on or around December 15, 2021, that John Jay College of Criminal Justice ("John Jay"), one of the component colleges of the City University of New York ("CUNY"), a public entity as defined by Title II of the ADA, has failed to timely and adequately provide reasonable modifications and auxiliary aids and services to Complainant with the effect of denying the Complainant participation in and benefit of John Jay's educational services, programs, and activities;

WHEREAS, pursuant to its authority under the ADA, the United States commenced an investigation to determine whether John Jay College was in compliance with Title II of the ADA and, as part of its investigation, the United States requested and received relevant information from CUNY;

WHEREAS, the United States and CUNY share the goal of resolving the matters raised by the United States' investigation and ensuring that CUNY provides its educational services, programs, and activities in compliance with Title II of the ADA;

WHEREAS, CUNY avers that it has been and remains committed to providing equal opportunity for the education of qualified individuals with disabilities and that it has already undertaken some of the requirements of this Agreement; and

WHEREAS, CUNY has agreed to take immediate actions to that end as set forth in this Voluntary Compliance Agreement (the "Agreement");

NOW, THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN THE UNITED STATES OF AMERICA AND CUNY AS FOLLOWS:

I. APPLICATION AND PARTIES BOUND

1. CUNY is the nation's largest urban public university, operating 25 colleges across the five boroughs of New York City that collectively serve 243,000 degree-seeking students and award 55,000 degrees each year. CUNY's mission is set forth in Article 125, Section 6201 of New York State's Education Law.

2. CUNY is accordingly a public entity subject to the provisions of the ADA pursuant to 42 U.S.C. § 12131(1).

3. The parties to this Agreement agree that it is in their best interests, and in the public interest, to resolve this dispute without engaging in protracted litigation. The parties have therefore voluntarily entered into this Agreement.

4. This Agreement shall be binding on CUNY and each of its agents, employees, successors, and assignees.

II. FINDINGS

5. The United States has determined that CUNY excluded the Complainant at John Jay from full participation in its sciences and mathematics course offerings, such as Calculus I, Software Office Management, Discrete Structures, and Linear Algebra, in violation of the ADA.

6. The United States has determined that John Jay failed to make available to Complainant, qualified notetakers, proctors, and tutors, and to provide the reasonable modifications and auxiliary aids and services required by the ADA. The individuals retained to work with the Complainant lacked even the basic understanding to be able to read out mathematical and scientific equations and symbols to the Complainant. CUNY's and John Jay's policies and procedures are currently inadequate to provide required auxiliary aids and services and other necessary accommodations to similarly situated students, as they do not provide for the timely recruitment and hiring of appropriately qualified individuals to ensure reasonable modifications and provision of auxiliary aids and services to students with vision disabilities in sciences and mathematics courses.

7. The United States determined that, in Discrete Structures, a mathematics course at John Jay, instructors had students use WebAssign, a third-party online learning product, to complete assignments and other coursework. However, when the Complainant accessed WebAssign, he experienced difficulty completing assignments because WebAssign was not capable of fully reading out mathematical and scientific equations and symbols. As a result, the Complainant was not able to enjoy equal opportunity and benefits as other students in the Discrete Structures mathematics course as required by the ADA. CUNY and John Jay have not ensured, including by adequate vetting during procurement, that its information technology, including WebAssign, provides equality of opportunity and benefits to all students as required not only by the ADA but by the New York State Information Technology Policy on Accessibility of Information Communication Technology ("NYS IT Accessibility Policy") and other state law. CUNY's exclusion of the Complainant from course offerings through the use of WebAssign violates Title II of the ADA and the ADA's requirement that a public entity provide aids, benefits, and services to qualified individuals with disabilities including when utilizing a contractual, licensing, or other arrangement.

8. The United States determined that the Complainant did not receive usable versions of required textbooks and other course materials in a timely manner by the start of the course. John Jay did not have adequate policies and procedures in place to ensure that usable versions of course materials were available by the start of a course, or as soon as practicable thereafter, to ensure that students who are visually impaired can participate in the full length of a course to the same degree as other students.

9. The United States has determined that as a direct result of the foregoing, the Complainant received unduly poor grades in Calculus I, Software Office Management, Discrete Structures and Linear Algebra and was forced to forgo taking other desired and required advanced

courses in the sciences and mathematics for a number of academic years because of the lack of adequate accommodations and the failure to provide aids, benefits, and services, including through contractual arrangements with third parties.

10. The United States has determined that the Complainant made a number of efforts to bring the deficiencies described above to the attention of the staff within John Jay's Office of Accessibility Services and at CUNY, to remediate the situation and obtain reasonable modifications and auxiliary aids and services, but was not able to obtain adequate support. The United States has determined that neither CUNY nor John Jay have adequate policies and procedures in place to ensure unfulfilled and necessary requests for accommodation and complaints are timely addressed and/or are appropriately escalated to the attention of relevant higher-level administrators.

III. ACTIONS TO BE TAKEN BY CUNY

11. Availability of Appropriately Qualified Learning Assistants. Within 150 days of the effective date of this Agreement, CUNY shall adopt and implement CUNY-wide policies that ensure the availability of notetakers, proctors, tutors, and other relevant individuals who have course-specific training and competency, including in sciences, mathematics, engineering, and technology courses, when necessary, to provide the necessary reasonable modifications and auxiliary aids and services to students with visual impairments, who are registered with a College's Office of Accessibility Services, no later than by the first meeting of the relevant course (or in the event a relevant student joins a course with less than two (2) weeks before the first meeting of the course, in which case CUNY must ensure such availability within two (2) weeks thereafter). Specifically:

- a. CUNY must post the job listing for the requisite individual with training and competency within five (5) days of notice of a relevant request for reasonable accommodation, in a manner and places likely to result in the receipt of qualified applications;
- b. CUNY shall consult the relevant student(s) in the selection process, including by facilitating interviews by the student(s) and soliciting student views, to the greatest extent practicable;
- c. CUNY must set compensation for the relevant positions, including where CUNY seeks to employ current students compensated by a stipend, at a reasonable and appropriate rate of pay that is likely to result in the receipt of qualified applicants;
- d. In the event that after posting, the relevant position remains unfilled, CUNY must take progressive steps to ensure attracting appropriately qualified candidates, including by raising the compensation and expanding its candidate search to a wider audience, until the position is filled; and

- e. CUNY shall submit to the United States via the undersigned counsel its proposed rate of compensation for the positions of notetakers, proctors, qualified readers, and tutors, no later than sixty (60) days from the effective date of this Agreement and shall agree to engage in good faith discussions to address any deficiencies identified by the United States.

12. Availability of Accessible Course Materials. Within 150 days of the effective date of this Agreement, CUNY shall adopt and implement CUNY-wide policies that ensure the availability of all course materials in accessible format to students with disabilities, who are registered with a College's Office of Accessibility Services, by the first meeting of the course (except in cases where a relevant student joins a course with less than two weeks before the first meeting of the course, in which case CUNY must ensure such availability within two (2) weeks thereafter). Specifically:

- a. As part of its obligation to ensure the availability of accessible course materials, where appropriate, CUNY shall begin, when possible and with minimal disruption to the students, consultations with students about identifying and procuring required accessible-format course materials as soon in advance as possible of the relevant course, including in previous semesters.
- b. If the relevant accessible version of course material is not practicably available, CUNY must take all necessary steps to procure a reasonable alternative as soon as possible; any reasonable alternative must be determined in consultation with the relevant student and instructor to ensure that the student will be able to avail themselves of the course to the same extent as all other students; and

13. Reasonable Accommodation Request and Complaint Procedures. Within 150 days of the effective date of this Agreement, CUNY shall require all of its colleges to adopt and implement policies that establish: clear, short deadlines by which responses to requests for accommodation and complaints about failures to provide reasonable accommodation, including complaints regarding access to course materials, must be provided; and, a defined process by which students may escalate concerns with responses to an appropriately higher-level administrator and/or faculty member within the component college, including clear, short deadlines by which those concerns must be addressed.

14. IT Accessibility. Within 150 days of the effective date of this Agreement, CUNY shall adopt and implement CUNY-wide policies that ensure compliance with the NYS IT Accessibility Policy and other relevant state law, including provisions related to third-party and online learning products. Consistent with state law or policy, CUNY shall verify and ensure accessibility of all third-party and other online learning products, platforms, and applications utilized in CUNY courses such as WebAssign, including compliance with the latest Web Content Accessibility Guidelines, currently published by the World Wide Web Consortium at www.w3.org/TR/WCAG, prior to their use in any class. In addition:

- a. CUNY shall ensure that all instructors are aware of and comply with requirements for accessibility under the ADA before assigning to students, coursework utilizing any online learning products, platforms, and applications, including any course content created by CUNY instructors; and
- b. CUNY shall consult with the information-technology accessibility experts of the U.S. Department of Education, who provide free technical assistance.

15. Training. Within 150 days of the effective date of this Agreement, CUNY shall develop a training program that shall be implemented at the commencement of the next semester not already in progress and at least twice more at intervals of one year to all Accessibility Office staff, and include such training as a component in the “new faculty” training that shall address: 1) the requirements of Title II of the ADA, 2) the existence of this Agreement and its provisions, 3) the NYS IT Accessibility Policy, and 4) “best practices” regarding the identification and provision of learning assistance services to students with disabilities, particularly in specialized fields. At least once every year thereafter, CUNY shall transmit by e-mail to each member of the faculty and each instructor at CUNY, a detailed summary of the contents of the training program, including each of the topics that are required to be addressed by this paragraph. No later than 150 days after the effective date of this Agreement, CUNY shall send to the United States via the undersigned counsel the proposed curriculum for the training, as well as the name(s), qualifications (including resume(s)), and contact information of the individual(s) who will conduct the training, and shall adopt any changes to the curriculum made by the United States.

16. Reporting. One hundred and fifty (150) days following the effective date of this Agreement, CUNY shall submit a report to the United States via the undersigned counsel confirming its implementation of the provisions of this Agreement. For two subsequent years, on the anniversary of the due date of the first report, CUNY shall submit a similar report and include for the period subsequent to its immediately prior report to the Department, the following: (1) the date of the annual training discussed in paragraph 15 and (2) information about all complaints, formal or informal, received by CUNY since the immediately prior report under this Agreement about technology-related accessibility issues for people with disabilities in any CUNY course, including a detailed description of the status or resolution of the matter.

IV. RELIEF TO THE COMPLAINANT

17. Within 60 days of the effective date of this Agreement, CUNY shall permanently purge, at the Complainant’s election to be memorialized in writing by the Complainant no later than 45 days from the effective date of this Agreement, from the Complainant’s transcript, grades received in Calculus I, Software Office Management, Discrete Structures and Linear Algebra, and/or provide the Complainant with the option of receiving a Passing grade on a Pass/Fail basis, and/or other appropriate relief to be agreed upon in good faith discussions between CUNY, the United States, and the Complainant.

18. Within 120 days of the effective date of this Agreement, CUNY shall pay the Complainant a total sum of \$10,000 in compensatory damages, by check payable to the order of the Complainant.

V. IMPLEMENTATION, ENFORCEMENT, AND EFFECT

19. In consideration for entering this Agreement, the United States will refrain from undertaking further action relating to this investigation or from filing a civil action at this time alleging discrimination based on the allegations set forth above and release CUNY and all of its constituent entities, and their successors, or assigns, and all past and present officials, employees, representatives and agents of CUNY, from any claims of discrimination under 42 U.S.C. §§ 12131 *et seq.*, in the nature of the allegations set forth above. However, the United States may review CUNY's compliance with this Agreement or Title II of the ADA at any time. If the United States believes that this Agreement or any portion of it has been violated, it will notify CUNY of the alleged violation and provide CUNY with not less than ninety days to remedy any violation and will not institute a civil action in the appropriate U.S. District Court, prior to the expiration of the ninety-day period, to enforce this Agreement and/or Title II of the ADA.

20. Nothing in this Agreement constitutes a waiver, settlement, or resolution of any claim by any party hereto against WebAssign.

21. Failure by the United States to enforce any provisions in this Agreement is not a waiver of its right to enforce other provisions of this Agreement.

22. This Agreement is binding on CUNY, including all principals, agents, executors, administrators, representatives, employees, successors in interest, beneficiaries, and assigns.

23. This Agreement is the entire agreement between the United States and CUNY on the matters raised herein and no other statement, promise or agreement, either written or oral, made by any party or agents of any party, is enforceable. This Agreement can only be modified by mutual written agreement of the parties.

24. This Agreement is not intended to remedy any other potential violations of the ADA or any other law that is not specifically addressed in this Agreement. Nothing in this Agreement relieves CUNY of its obligation to otherwise comply with the requirements of the ADA.

25. A copy of this Agreement shall be made available to any person upon request. However, this Agreement shall not be admissible in any proceeding other than to enforce this Agreement itself. Nothing in this Agreement constitutes an admission by CUNY, or any of its constituent entities, of any custom, policy or practice violative of any law, rule, or regulation of the United States, or the State or City of New York.

26. This Agreement memorializes the commitments made by CUNY to provide its educational services, programs, and activities in compliance with the ADA and the terms under which the United States has agreed to conclude its investigation of violations of the ADA. This Agreement is not intended to certify or signify, however, that CUNY is now (or, with the actions taken pursuant to this Agreement, will be) in full compliance with the ADA, or constitute a finding by the United States of such compliance, and it may not be used in any proceeding to signify such compliance. This Agreement does not affect CUNY's continuing responsibility and obligation to comply with all aspects of the ADA. This Agreement is not intended to reflect any legal

interpretation of any provisions of the ADA by the United States, and it may not be used in any proceeding to demonstrate such legal interpretations.

27. The effective date of this Agreement is the date of the last signature below.

28. This Agreement shall terminate after three years from the effective date.

29. The individuals signing this Agreement represent that they are authorized to bind the parties to this Agreement.

Dated: New York, New York
April 12, 2023

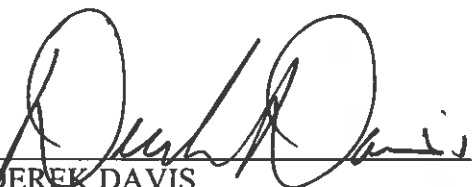
FOR THE UNITED STATES:

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: 
STEPHEN CHA-KIM
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
(212) 637-2768
stephen.cha-kim@usdoj.gov

Dated: New York, New York
April 12, 2023

FOR THE CITY UNIVERSITY OF NEW YORK:

By: 
DEREK DAVIS
General Counsel & Senior Vice Chancellor for
Legal Affairs
205 East 42 Street, 11th floor
(646) 664-9210
Derek.Davis@cuny.edu