

Resolution Agreement
Iowa Western Community College
OCR Complaint # 05-15-2072

Iowa Western Community College (“College”) agrees to this resolution agreement (“Agreement”) to resolve complaint #05-15-2072 filed with the U.S. Department of Education, Office for Civil Rights (“OCR”). The College submits this Agreement to ensure its compliance with 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, and Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12132 -12134, and its implementing regulation, at 28 C.F.R. Part 35. The District’s voluntary submission of the Agreement is for the purpose of resolving case number #05-15-2072 and shall not constitute an admission of liability or wrongdoing.

Direct Threat Policies and Procedures

1. By May 12, 2017, the College will review and revise, as necessary, its policies, practices, and procedures regarding any person with a disability who may pose a direct threat to the health and safety of others in order to ensure compliance with Section 504 and Title II. The College will ensure that its policies, practices, and procedures provide that, before taking adverse action against a student engaging in threatening behavior related to his or her disability, the determination that the student poses a direct threat to the health and safety of others is based on an individualized assessment exercising reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of College policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk. In exceptional circumstances, such as situations where safety is of immediate concern, the College may take interim steps pending a final decision regarding adverse action against a student on the basis of direct threat as long as the student is provided reasonable notice of the basis for the adverse action and full due process is offered later.

In addition:

- (a) The Policies and Procedures will provide that the College will reasonably modify policies, practices and procedures where necessary to avoid adverse action against a student engaging in a threatening behavior related to his or disability if the modification will mitigate the risk and making such modifications would not fundamentally alter the college’s program.
- (b) The Policies and Procedures will provide that the decision that a student poses a direct threat to the health and safety of others will be made by a group of persons with expertise in the area. This group will include persons with appropriate medical and or psychological training and experience, where the student’s medical documentation is insufficient standing alone to support the group’s decision. The College may have

such persons on staff or may contract with third parties so it has the appropriate persons available to make the decision.

- (c) The College may request medical documentation from a student that is reasonable in its scope in terms of time frame of documents requested and the documents or data requested is relevant to the determination that a student poses a direct threat to the health and safety of others.
- (d) The Policies and Procedures will provide written notice to students of applicable appeal procedures in cases that result in an interim suspension or other adverse actions, including any applicable deadlines.

REPORTING REQUIREMENT: By May 12, 2017, the College will submit to OCR for its review and approval its revised policies and procedures referenced in this item of this Agreement.

- 2. Within 30 days of receipt of OCR's approval of the policies and procedures referenced in Item 1 of this Agreement, the College will adopt and implement the revised policies and procedures. No later than the beginning of the 2017 Fall Semester, the College will publish the revised policies and procedures through the College's website, revised student handbooks, and any other additional means of notification the College deems effective to ensure that the information is widely disseminated.

REPORTING REQUIREMENT: Within 30 days after the completion of Item 1 of this Agreement, the College will provide OCR with documentation that it has completed the item, including copies of the written notices to students, administrators, faculty, and staff regarding the revised policies and procedures and a description of how the notices were distributed, copies of its revised student handbooks or inserts, links to its webpage where the revised policies and procedures are located, and documentation of any other additional means of notification used by the College.

Notice of Nondiscrimination

- 3. By March 31, 2017, the College will review and revise, if necessary, its notice of nondiscrimination to ensure that the College's policies and procedures meet the requirements of the regulations implementing Section 504, at 34 C.F.R. § 104.8, and Title II, at 28 C.F.R. § 35.106, include the name, title and contact information (including phone number, office address and e-mail) for its Section 504/Title II Coordinator, and state that inquiries concerning the application of Section 504 or Title II may be referred to the Section 504/Title II Coordinator.

Grievance Procedures

- 4. By May 12, 2017, the College will review and, revise its grievance procedures to ensure the College provides for prompt and equitable resolution of complaints of discrimination based on disability. The revised procedures must include notice that the College's grievance procedures apply to complaints alleging discrimination or harassment carried out by students, employees, and third parties; adequate definitions of prohibited discrimination and

harassment, with specific examples and an explanation that the procedures apply to complaints alleging disability harassment carried out by employees, other students, or third parties; designated and reasonably prompt timeframes for major stages of the grievance process, including a reasonable period of time for filing a complaint as well as the process for extending timelines; adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence; the evidentiary standard that must be used (preponderance of the evidence) in resolving a complaint; the provision for written notice to both parties of the outcome of the complaint; and an assurance that the College will take steps to prevent recurrence of any discrimination or harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

REPORTING REQUIREMENT: By May 12, 2017, the College will submit to OCR for its review and approval its revised notice and procedures referenced in Items 3 and 4 of this Agreement.

5. Within 30 days of OCR's approval of the notice and procedures referenced in Items 3 and 4 of this Agreement, the College will adopt and implement the revised notice and grievance procedures. No later than the beginning of the 2017 Fall Semester, the College will make this notification available through the College's website, revised student handbooks, and any other additional means of notification the College deems effective to ensure that the information is widely disseminated.

REPORTING REQUIREMENT: Within 30 days after the completion of Item 5 of this Agreement, the College will provide OCR with documentation that it has completed this item, including copies of the written notices to administrators, faculty, staff, and students and a description of how the notices were distributed, copies of its revised student handbooks or inserts, a link to its webpage where the revised policies and procedures are located, and documentation of any other additional means of notification used by the College.

6. By March 31, 2017, the College will establish a record keeping system for disability discrimination complaints, including a dated copy of the grievance, copies of investigative documents or interviews, a copy of the dated written notice provided to both parties of the final determination, including any findings and applicable sanctions, and, if applicable, any appeal determination.

REPORTING REQUIREMENT: By March 31, 2017, the College will provide OCR a description of its record keeping system in this item of this Agreement, and provide a copy of all internal grievances alleging disability discrimination filed by or on behalf of a student(s) during fall 2015- 2016 academic year and, for each grievance, copies of any investigative documents or interviews, the written notice of the outcome of the investigation, including any applicable sanctions, and, if applicable, any appeal determination. The College will provide OCR the same data by June 1, 2017, for the 2016-2017 academic year; and by June 1, 2018, for the 2017-2018 academic year.

Training

7. Within 60 days of OCR's approval of the revised policies and procedures referenced in Item 1 of this Agreement, the College will provide effective training on its revised policies and procedures to appropriate personnel of the College including, but not limited to, College personnel involved in determining whether a disabled student poses a direct threat to the health and safety of others and the discipline of such students, and those who are directly involved in processing, investigating, and/or resolving complaints or other reports of discrimination.

REPORTING REQUIREMENT: Within thirty (30) days of completing this training, the College will provide OCR with documentation that it has provided the training referenced in this item of the Agreement, including the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and a sign-in sheet with the names and titles of the College personnel who attended the training.

8. Within 60 days of OCR's approval of the revised policies and procedures referenced in Items 3 and 4 of this Agreement, the College will provide training on the grievance procedures to all staff directly involved in processing, investigating, and/or resolving complaints of disability discrimination or reports of disability harassment. The training will specifically address the appropriate techniques for promptly responding to and investigating grievances, including timelines, responsibilities, documentation, interviewing complainants, the accused, and witnesses, analyzing the information obtained during investigations, making findings using the preponderance of evidence standard, and responding to the complainant in writing with respect to the College's determination and the complainant's appeal rights.

REPORTING REQUIREMENT: Within thirty (3) days of completing training, the College will provide OCR with documentation that it has provided the training referenced in Item 8 of the Agreement, including the dates of the training, the names and titles of the trainer(s), a copy of any materials used or distributed during the training, and a sign-in sheet with the names and titles of the College personnel who attended the training.

Individual Remedies

9. The College will repay Student A's loans for the 2014-2015 academic year and reimburse her for \$1,404.00 which represent her out-of-pocket expenses, and, if Student A elects to re-enroll in the College, the College will credit Student A's account with \$1800.00 to compensate her for the fall 2014 XXX scholarship.
10. Upon execution of this Agreement, the College will expunge all references, if any, to Student A's interim two-year suspension from Student A's records that could be released to third parties.
11. If, upon re-enrollment or at any time in the future, the College believes that the Complainant poses a direct threat to the health and safety of herself or others, the College will apply the requirements of Section 504 and Title II and Items 1 of the Agreement to its individualized determination as to whether the Complainant poses a direct threat to others that would disqualify her from continued enrollment.

12. Nothing in this Agreement shall be construed as a limitation on the College's right to impose disciplinary sanctions pursuant the student code of conduct and disciplinary procedures set forth in the College's Student Code of Conduct, Discipline and Appeals Procedure, provided those standards and procedures are applied in a legitimate, non-discriminatory and non-pretextual manner.

REPORTING REQUIREMENT: By March 31, 2017, the College will submit to OCR documentation verifying that it has implemented paragraphs 9 through 12 of the Agreement.

The College 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. §§ 104.3, 104.7, and 104.8, and Title II, at 28 C.F.R. §§ 35.106 and 35.139, which were at issue in this case. OCR will provide reasonable notice to the College should it make a request for data or on-site visits and interviews.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. §§ 104.3, 104.7, and 104.8, and Title II, at 28 C.F.R. §§ 35.106 and 35.139, which were at issue in this case.

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, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

Approved and agreed to on behalf of Iowa Western Community College:

President or Designee

Date