

RESOLUTION AGREEMENT

Docket Number 07132229
Flint Hills Community College

The U.S. Department of Education, Office for Civil Rights (OCR), conducted a complaint investigation of the Flint Hills Community College (College), Emporia, Kansas, pursuant Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (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 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. The College, as a recipient of Federal financial assistance and a public entity, is subject to the requirements of Section 504 and Title II.

The complainant alleged the College failed to provide him with appropriate academic adjustments or auxiliary aids when the College required the complainant to retake the entrance assessment.

Before OCR completed its investigation, the College agreed to take the following actions:¹

Procedures for Students Requesting Academic Adjustments/Auxiliary Aids

1. The College will review and revise its policies and procedures for students requesting academic adjustments/auxiliary aids under Section 504 to ensure that qualified students with disabilities receive necessary, timely and effective academic adjustments/auxiliary aids in compliance with Section 504. Specifically, the College will review and modify its policies and procedures for students with disabilities seeking academic adjustments or auxiliary aids to ensure they include the following:
 - a. An interactive process between a trained College official(s), such as a Disability Services Officer or the Section 504 Coordinator, and the requesting student with a disability;
 - b. the timeline for major steps in the interactive process;
 - c. information identifying the information needed from students requesting academic adjustments/auxiliary aids to assist the College in determining whether a student is a qualified individual with a disability and the appropriate academic adjustment and/or auxiliary aid, including all relevant medical and other documentation to establish the existence and extent of the disability involved,

¹ The College is resolving this complaint pursuant to Section 302 of OCR's *Case Processing Manual*. This Agreement is entered into to ensure the College's compliance with Section 504 and Title II. It does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR of any violation of Section 504 or Title II which were at issue in this complaint.

how it affects the student, and the basis for the specific accommodation requested and a means of notifying students of deficiencies in documentation;

- d. examples of reasonable academic adjustments/auxiliary aids;
- e. a formal means of notifying the requesting student in writing whether the requested academic adjustment/auxiliary aid is approved, denied, or an alternative is suggested;
- f. a process to ensure the academic adjustments/auxiliary aids provided are effective;
- g. a formal means of notifying relevant instructors and or other persons responsible under the student's approved accommodation plan of approved aids, services, and modifications;
- h. the steps students should follow and/or when to notify appropriate College officials that an approved academic adjustment/auxiliary aid has not been implemented by instructors or other persons responsible under the student's approved accommodation plan and how the student can obtain assistance in receiving approved academic adjustments or auxiliary aids; and
- i. a process for ensuring students denied requested academic adjustments/auxiliary have an opportunity to appeal the determination.

REPORTING REQUIREMENT: By 11/30/2013, the College will submit to OCR a copy of the draft procedures for requesting academic adjustment/auxiliary aids for review and approval.

- 2. Within 10 calendar days of receiving OCR's approval of the College's procedure for students requesting academic adjustment/auxiliary aids required by item 1, the College will disseminate the approved procedure using its standard methods for disseminating new information and procedures that impact the College's student population (such as including the information on the College's website and in student handbooks).

REPORTING REQUIREMENT: Within 10 calendar days after taking action to appropriately publish and disseminate the procedure developed pursuant to item 1 of the Agreement, the College will provide OCR with links to the information, if available in electronic format, or copies of publications.

Section 504 and Title II Grievance Procedures

3. By 11/30/2013, the College will review and revise its Section 504/Title II grievance procedures to ensure the procedures at a minimum:
 - a) provide an explanation of how to file a complaint under the procedures, including the title and contact information of the staff person responsible for investigating a grievance and where and in what manner complaints can be filed;
 - b) provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity for all parties involved to present witnesses and other evidence;
 - c) require records detailing the investigation; including notes of interviews, copies of documents reviewed, and other relevant information to be maintained;
 - d) set time frames for major stages of the complaint process;
 - e) require written notification to the parties of the outcome of the complaint investigation;
 - f) include an assurance that the College will keep the identity of the complainant, the complaint, and investigation confidential to the extent possible;
 - g) include an assurance that the College will take steps to prevent the recurrence of any discrimination and/or harassment, and to remedy the discriminatory effects of discrimination and/or harassment, of which it has notice;
 - h) include a provision prohibiting retaliation against a student who files a grievance or individuals who participate in a grievance; and
 - i) include the name or title, address, and telephone number of the employee(s) responsible for coordinating the College's nondiscrimination compliance efforts under Section 504/Title II.

REPORTING REQUIREMENT: By 11/30/2013, the College will submit its revised Section 504/Title II grievance procedures to OCR for its review and comment.

4. Within 60 calendar days of written notification from OCR that its Section 504/Title II grievance procedures are consistent with Section 504/Title II requirements and the terms of item 3, the College will adopt and implement the procedures, publish the procedures in its student handbooks, and post the procedures on its website in a section accessible to students and parents.

REPORTING REQUIREMENT: The College will provide OCR documentation by 11/30/2014, 2013, showing it has complied with item 4 of this Agreement. If the Section 504/Title II grievance procedures are available on the College’s website, the College may provide OCR with a link to the publication.

5. By 3/30/2014, the College will provide Section 504/Title II training for all Disability Services staff, which includes all personnel who are involved in implementing the procedures outlined under items 1 and 3 of this Agreement to ensure that staff are aware of and able to implement these procedures. The training will focus on the College’s procedures for providing academic adjustments/auxiliary aids to students with disabilities along with an overview of the legal standards for students with disabilities under Section 504 and the College’s applicable Section 504/Title II grievance procedures.

REPORTING REQUIREMENT: By 4/15/2014, the College will provide OCR documentation showing it has completed the training described above for the 2013-14 school year. The documentation must identify the following: a) the date, time and location of the training; b) the topics addressed at the training(s) (the College may provide OCR an outline of the training and copy of the materials disseminated at the training); c) the name(s), title(s), and credentials of the individual(s) who conducted the training; and d) the name, title, and work location of each College administrator or employee who attended the training (a sign-in sheet with the attendees’ names, titles, and work locations is sufficient).

6. Within 15 days of signing this Agreement, the College will determine whether the use of an American Sign Language (ASL) interpreter by students when taking the reading and written portions of the entrance assessment for the Interactive Multimedia Design Program (Program) constitutes an undue burden on the College or a fundamental alteration of the Program or required entrance assessment for the Program. As part of its deliberative process, the College will consider the nature and function of the Program entrance assessment and what the assessment is meant to measure and the skill set(s) being tested by the entrance assessment and how this relates to the Program. When determining whether the use of an ASL interpreter during the Program entrance assessment constitutes an undue burden or fundamental alteration, the College will ensure individuals knowledgeable of the Section 504 and Title II requirements regarding the provision of academic adjustments and auxiliary aids for students with disabilities are involved in the determination. This may include but is not limited to the Director of the Disability Services Office and/or Section 504 and Title II coordinator(s).²

² OCR is available to provide technical assistance to the College upon request.

REPORTING REQUIREMENT: Within 5 days of reaching a determination regarding the use of an ASL interpreter during the Program entrance assessment, the College will submit its written determination and the basis or rationale for its determination to OCR. Specifically, if the College determines the use of the ASL interpreter constitutes a fundamental alteration or an undue burden, the College will provide documentation supporting its determination. Additionally, the College will submit the names, titles and contact information for the individuals involved in the determination and will provide OCR with copies of any information or documentation reviewed or considered by the individuals when reaching the determination.

Individual Remedies for the Complainant

7. Within thirty days from the date of this Agreement, the College will contact the complainant in writing, including the use of email, to determine whether he is still interested in the Program. The College will also provide the complainant with the name and contact information for the Director of the Disability Services Office and information regarding the process students must use when requesting an academic adjustment or auxiliary aid. The complainant will have thirty days from the date of the College's communication to the complainant to respond to the College's inquiry regarding his interest in the Program.

REPORTING REQUIREMENT: Within 5 days of sending the written communication to the complainant, the College will provide OCR a copy of the written communication and any accompanying documentation sent to the complainant.

8. If the complainant is interested in applying for the Program and the College determined the use of an ASL interpreter by students when taking the entrance assessment for the Program may constitute an approved academic adjustment or auxiliary aid for students with disabilities, then the College will engage in the interactive process with the complainant to determine whether his use of the ASL interpreter is a reasonable accommodation. The College will utilize its process for making determinations about whether students with disabilities are entitled to auxiliary aids and academic adjustments to participate in its programs and activities. Specifically, the College will engage in an interactive process with the complainant, which may include formal requests for documentation, if necessary. This process will include consideration of any recommended reasonable modification or adjustment that would enable the complainant to have an equal opportunity to benefit from the implicated academic program, service or benefit and will take into consideration such factors as: the complainant's prior use of an ASL interpreter and other academic adjustments or auxiliary aids when completing written work or testing; how the complainant processes information and/or communicates through the ASL interpreter; and the College's determination as to the nature and function of the

Program entrance assessment and what the assessment is meant to measure and how specifically this relates to the complainant's known disabilities. The College may request additional medical documentation from the complainant to establish the existence of a disability and the need for specific accommodations. The process will determine whether the complainant requires the services of the ASL interpreter when taking the Program entrance assessment to ensure that he is not denied the benefits of, excluded from participation in, or otherwise subjected to, discrimination.

REPORTING REQUIREMENT: By 11/30/2013, the College will provide to OCR the results of its consideration of the complainant's request to utilize an ASL interpreter for the Program entrance assessment, including all documents or other information considered, notes or other evidence of the interactive process between the complainant and College officials.

9. If the College denies the complainant's requested accommodation, the denial must be based on a consideration of the relationship of the disability to the requested accommodation, and a diligent, reasoned, academic judgment by relevant College officials who considered alternative means, their feasibility, cost and effect on the academic program and came to a rationally justifiable conclusion that the available alternative would result either in lowering academic standards or requiring substantial modification to the College's academic program, or was not related to the complainant's disability. A denial of the complainant's request for an ASL interpreter must include a determination that granting the request would result in a fundamental alteration of the academic goals or outcomes of the course or program area or activity in which the request for accommodation is being made and be inconsistent with a legitimate objective that the entrance assessment seeks to measure.

The College will provide the complainant with written notification of its decision and information regarding any appeal rights within ten (10) days of the date of its decision.

REPORTING REQUIREMENT: By 11/30/2013, if the College denies the complainant's request for an ASL interpreter, the College will provide documentation that the College's decision-making process met the requirements of items 1 and 6 of this Agreement. If the College decided to deny the complainant's request for an accommodation, the College's documentation will include, at a minimum, the names and titles of the individuals who participated in the decision, all documents considered in making the decision, documentation of the interactive process with the complainant, alternatives to the complainant's requested accommodation that were considered, and an explanation why a particular academic adjustment or auxiliary aid was determined to result in lowering academic standards or requiring substantial modification to the College's academic program or why the requested accommodation was not related to the complainant's disability.

10. If the College determines that an ASL interpreter is a necessary academic adjustment or auxiliary aid, the College will make a written offer to the complainant to either retake the Program entrance assessment at no cost with the approved academic adjustments/auxiliary aids in place or accept the previous score the complainant received when taking the entrance assessment with the ASL interpreter (April 9, 2013 exam). The complainant will also be provided with information regarding the next steps in the application process for admittance to the Program.

REPORTING REQUIREMENT: By 12/30/2013, if the College determined that an ASL interpreter for the reading and writing portions of the Program assessment test is a necessary academic adjustment/auxiliary aid for the complainant, the College will provide OCR documentation the College has offered the complainant the option outlined in item 10 and the information regarding the complainant's decision.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further the College understands that during the monitoring of this Agreement, 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 and Title II which were at issue in this case.

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 and Title II.

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 College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

/s/ Lisa Kirmer
Lisa Kirmer, Vice President
Flint Hills Community College

10/30/2013
Date