



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

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CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

June 2, 2016

XXXXXXXXXXXXXXXXXXXXXXXXXXXX  
Assistant Attorney General – Education Section  
Office of Ohio Attorney General Mike DeWine  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: OCR Docket #15-15-2063

Dear xx xxxxxxxx:

This letter is to notify you of the disposition of the complaint filed on xxxxxxxx xx xxxx, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), against Terra State Community College (the College). The complaint alleged that the College discriminated against a student (the Student) on the basis of disability (xxxxxxx xxxxxxxxxx) during the xxxx-xxxx academic year. Specifically, the complaint alleged:

1. The College failed to provide the Student with agreed-upon academic adjustments and auxiliary aids and services as described below:
  - a. In the xxxx xxxx semester, the Student’s xxxxxxxxxxxx xxx xxxxxxxxxxxx course instructors failed to provide the Student with xxxxx xxxxxx..
  - b. From the beginning of the xxxx xxxxx semester until xxxxxxxx xxxxx, the Student’s xxxxxxxx xxxxx xxxxxxxxxxxxxx xxxxxxxxxxxx instructors failed to use xxxxxxxx xxxxxxxxxxxxxx for course materials.
  - c. In approximately xxxxxxxx xxxxx, the Student was required to take a “transitions” test that included xxxxxxx xxxxxxxxxxx xxxxxxx xxxxxxxxxxxxxxxx.
  - d. In xxxxxxxx xxxxxxxx, the College required the Student to provide xxx own xxxxxxxxxxxxxxxx.
2. On approximately xxxxxxxx xxxxxxx, the College categorically refused the Student’s requests for an xxxxxxxxxxxxxxxx and other academic adjustments and auxiliary aids and services to assist the Student during xxx xxxxxxxx xxxxxxxxxxx assignments.
3. The College subjected the Student and other students with xxxxxxxxxxx xxxxxxxxxxx to harassment based on disability when College administrators and

staff made comments such as “xxxx xxxxxxx xxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx” and told students not to take xxxxxxx xxx xxxxxxxxxxxxxxx because it is a “xxxxxxxxx” class.

4. On approximately xxxxxxx x xxxxxx, the College dismissed the Student from its xxxxxxx xxxxxxx because of the Student’s xxxxxxxxxxx xxxxxxxxxxx.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the College is subject to Section 504 and Title II. OCR therefore had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR initiated an investigation of the following legal issues:

- Whether the College excluded a student with a disability from participation in, denied xxx the benefits of, or otherwise subjected the student to discrimination under in its education program in violation of Section 504’s implementing regulation at 34 C.F.R. §104.4 and 104.43.
- Whether the College made such modifications to its academic requirements, policies, practices, or procedures as were necessary to ensure that such requirements did not discriminate or have the effect of discriminating against a qualified student with a disability on the basis of disability, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.44(a) or the Title II implementing regulation at 28 C.F.R. § 35.130(b)(7).
- Whether the College took necessary steps to provide auxiliary aids and services to ensure that no qualified student with a disability is denied the benefits of the College’s program, excluded from participation, or otherwise subjected to discrimination on the basis of disability, as required by the Section 504 implementing regulation at 34 C.F.R. § 104.44(d).
- Whether the College failed to take appropriate steps to ensure that communications with a participant are as effective as communications with others, as required by the Title II implementing regulation at 28 C.F.R. § 35.160.
- Whether the College subjected students with xxxxxxx xxxxxxxxxxx to disability-based harassment that was sufficiently severe, persistent, or pervasive to interfere with the students’ ability to participate in or benefit from the College’s educational program, in violation of the Section 504 implementing regulation at 34 C.F.R § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

In order to investigate this complaint, to date, OCR interviewed the Student and reviewed documents submitted by the College. On approximately August 7, 2015, and again, on April 6, 2016, the College expressed interest in voluntarily resolving the complaint pursuant to Section 302 of OCR's Case Processing Manual (CPM). Accordingly, OCR has resolved allegation #3 pursuant to Section 302 of the CPM. However, with respect to allegations #1, #2, and #4, OCR has determined that these allegations have been resolved. The reasons for OCR's determinations are explained below.

**Allegations #1, #2, and #4 – Alleged Disability Discrimination**

[xxx---paragraph redacted---xxx]

In addition, OCR's review of the complaint found that it included the same allegations and/or concerned the same factual allegations as OCR has opened in the instant complaint as allegations #1, #2, and #4. Specifically, both complaints included factual allegations regarding the College's alleged failure to specifically provide the Student with the academic adjustments and auxiliary aids and services of xxxxxxxxxxx xxxxxxxxxxx, xxxxxxxxxxx xxxxxxxxxxx, xxxxxx xxxxxx xxxxxxxx; both complaints included factual allegations concerning the College's alleged refusal to provide academic adjustments and auxiliary aids and services for the Student's participation in the College's xxxxxxxxxxx xxxxxxxxxxx program; and both complaints included factual allegations concerning the College's alleged inappropriate dismissal of the Student from the xxxxxxxxxxx xxxxxxxxxxx. The evidence obtained to date from the College and the Student shows that these allegations, as part of the xxxxxx, were resolved through a xxxxxxxxxxx xxxxxxxxxxx that resulted in an xxxxxx xx xxxxxxx to the Student, which xxx accepted.

OCR's case processing procedures provide that OCR will close complaint allegations when OCR obtains credible information indicating that the allegations raised by the complaint have been resolved, and there are no systemic allegations. As allegations #1, 2, and 4 were opened for investigation only with respect the Student, and did not involve systemic allegations, and as the information obtained shows these allegations have been resolved through the xxxxxxx xx xxxxxxx, OCR is administratively closing these allegations.

**Allegation #3 – Alleged Disability Harassment**

With regard to alleged disability harassment, the Student told OCR that College advisors had told students in the xxxx xx xxxx not to take xxx, and an admissions advisor had said that xxx courses were "xxxxxxx." She said that an xxx instructor, who is xxxxxx, told her that he had learned this after enrollment in his courses declined in xxxx xxxxx and he found out advisors were telling students not to take his classes. The Student also alleged that during the last week of xxxxxxxxxxx xx xxxxxxxxxxx xxxx the College's xxxxxxxxxxx xx xxxxxxxxxxx had told her that xxxxxx xxxxxxx should not be xxxxxxx because it was "xxxxx xxxxx" and raised examples that did not apply to the Student of how xxx believed a xxxx xxxxx would be unsafe for xxxxxxx and other xxxxxx.

To date, the College has not provided OCR any information in response to this allegation regarding the alleged disability harassment targeted at xxxx xxx xxxxxx xx xxxxxx students.

The College stated in its position statement that its investigation “did not yield any documents or information specific to” this allegation.

As noted above, prior to the conclusion of OCR’s investigation into this allegation, the College requested to voluntarily resolve the complaint allegations.

- **Applicable Legal Standards**

The Section 504 implementing regulation, at 34 C.F.R. §§ 104.4(a) and 104.43(a), provides that no qualified student with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefits, or services, or under any program or activity which receives Federal financial assistance.

Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in the institution’s program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or comments that are threatening, harmful, or humiliating. When harassing conduct is sufficiently severe, persistent, or pervasive that it creates a hostile environment, it can violate a student’s rights under the Section 504 and Title II regulations. A hostile environment may exist even if there are no tangible effects on the student where the harassment is serious enough to adversely affect the student’s ability to participate in or benefit from the educational program. When disability harassment limits or denies a student’s ability to participate in or benefit from an educational institution’s programs or activities, the institution must respond effectively. Where the institution learns that disability harassment may have occurred, the institution must investigate the incident(s) promptly and respond appropriately.

If an employee who is acting, or who reasonably appears to be acting, in the context of carrying out their official responsibilities over students engages in disability harassment and the harassment denies or limits a student’s ability to participate or benefit from the institution’s program on the basis of disability, the institution is responsible for the discriminatory conduct. The institution is also responsible for remedying any effects of the harassment on the victim, as well as for ending the harassment and preventing its recurrence. This is true whether or not the institution has “notice” of the harassment.

### **Voluntary Resolution and Conclusion**

On May 23, 2016, the College submitted the enclosed Resolution Agreement (the Agreement), signed May 20, 2016, to OCR, which, when fully implemented, will resolve the remaining issue raised in this complaint. The Agreement requires the College to (1) develop, and submit to OCR for review and approval, training designed to inform all College faculty, staff, and administrators, of the College’s obligation to comply with Section 504 and Title II and the

prohibition against disability-based harassment and (2) provide the OCR-approved training to all College faculty, staff, and administrators.

In light of the signed Agreement, OCR finds that this complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the Agreement. Should the College fail to fully implement the Agreement, OCR will reopen the allegations and take appropriate action to ensure the College's compliance with the Section 504 and Title II regulations.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the harmed individual may file a complaint alleging such treatment. The Complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the College's cooperation during OCR's resolution of this complaint. We look forward to receiving the College's first monitoring report pursuant to the Agreement, which will be due on August 1, 2016. For questions about implementation of the Agreement or this letter, please contact Ms. xxxxx xxxxx, Supervisory Attorney/Team Leader, at (216) xxx-xxxx or by e-mail at xxx.x.xxx@ed.gov.

Sincerely,

/s/

Emily Babb  
Acting Director

Enclosure