



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

5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

July 19, 2017

Dr. Ali Rafieymehr  
Interim President  
River Valley Community College  
1 College Place  
Claremont, NH 03743  
Email: arafieymehr@ccsnh.edu

Re: Complaint No. 01-16-2007  
River Valley Community College

Dear Dr. Rafieymehr:

This letter is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is closing its investigation of the above-referenced complaint against the River Valley Community College (College), alleging disability discrimination. Specifically, the Complainant alleged that the College failed to provide him with the agreed-upon accommodation X-PORTION OF SETNENCE REDACTED-X. OCR is closing this complaint because, prior to OCR completing its investigation, the College entered into a voluntary resolution agreement (Agreement) that resolves the complaint allegations. A copy of the Agreement is enclosed.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104; and Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in education programs and activities. The College is subject to Section 504 because it receives federal financial assistance from the U.S. Department of Education, and it is subject to Title II because it is a public entity operating a higher education program.

OCR investigated the following legal issue:

- Whether the College discriminated against the Complainant, on the basis of disability, by failing to provide him with necessary academic adjustments, in violation of 34 C.F.R. § 104.44 and 28 C.F.R. § 35.130.

## LEGAL AUTHORITY

The Section 504 regulation, at 34 C.F.R. § 104.44(a), requires recipients, such as postsecondary institutions, to modify academic requirements when necessary to ensure that such requirements are not discriminatory on the basis of disability. The regulation also provides, at 34 C.F.R. § 104.44(d), that recipients shall take such steps as necessary to ensure that no student with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired

sensory, manual, or speaking skills. The Title II regulation, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or 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 service, program, or activity.

At the post-secondary level, it is the student's responsibility to disclose a disabling condition and to request academic adjustments or auxiliary aids. Once a postsecondary institution receives documentation of a student's disability and a request for services, the institution and the student should work together in an interactive process to identify appropriate academic adjustments. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

Academic requirements that the recipient can demonstrate are essential to instruction or that are directly related licensing requirements will not be regarded as discriminatory. 34 C.F.R. § 104.44(a). Further, modifications that would fundamentally alter the nature of the service, program, or activity, are not required. 28 C.F.R. § 35.130(7). In certain circumstances, the decision that compliance would result in such fundamental alteration or undue burdens must be made by the head of the public entity or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. 28 C.F.R. § 35.150; 28 C.F.R. § 35.164. The recipient should engage with the student in an interactive process and consider whether effective alternatives exist that would allow the individual with a disability to participate without lowering essential requirements or fundamentally altering the nature of the program.

## **PRELIMINARY INVESTIGATION AND RESOLUTION**

During the course of OCR's investigation, OCR reviewed and analyzed documentation provided by the Complainant and the College, including, but not limited to, correspondence between the Complainant and the College, documentation of the Complainant's accommodations, and the College's policies and procedures related to receiving accommodations. In addition, OCR interviewed several witnesses, including the Complainant, the College's 504/Title II coordinator (Coordinator), and the course professor (Professor).

X-PARAGRAPH REDACTED-X

X-PARAGRAPH REDACTED-X

X-PARAGRAPH REDACTED-X

X-PARAGRAPH REDACTED-X

Based on its preliminary investigation, OCR had concerns as to whether the College took sufficient steps to cure the known gap in providing the Complainant with a specific agreed-upon accommodation. However, based on the evidence obtained to date, OCR has not yet made a compliance determination with respect to College staff and faculty's actual practices to address known gaps in the delivery of accommodations, including whether the College took sufficient action to address the XXXXXXXX XXXXXX for the Complainant in this case. The College requested to voluntarily resolve this matter before OCR could investigate these issues further.

### **RESOLUTION AGREEMENT**

After negotiations between OCR and the College, the College agreed to take a number of steps to resolve the complaint allegations and the preliminary concerns OCR identified in its investigation to date. These steps are set out in the Agreement (enclosed), signed by the College on July 18, 2017. OCR has determined that the Agreement is aligned with the allegations and is consistent with the laws and regulations OCR enforces. Accordingly, OCR is closing its investigation as of the date of this letter, and will monitor the College's implementation of the Agreement, and will notify the parties in writing of the monitoring closure, once it determines that the College has fulfilled the terms of the Agreement.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding the College's compliance with the regulations implementing Section 504 and Title II, or the other laws enforced by OCR that may exist but are not discussed here. This letter sets forth OCR's determination in this individual OCR case. This letter contains fact-specific investigative findings and dispositions of this individual 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 lawsuit regarding the matters raised in this case, whether or not OCR identified compliance concerns.

Please note 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, an individual may file another complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, OCR will seek to protect all personal information to the extent provided by law that, if released, could constitute an unwarranted invasion of privacy.

OCR thanks the College for its assistance in resolving this matter. If you have any questions regarding this letter and/or OCR's investigative process, please feel free to contact Civil Rights Attorney Tokufumi Noda at (617) 289-0017 or by email at [Tokufumi.Noda@ed.gov](mailto:Tokufumi.Noda@ed.gov).

Sincerely,

/s/

Ramzi Ajami  
Compliance Team Leader

Enclosure

cc: Jeanne Herrick, Esq.