



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
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December 20, 2017

IN RESPONSE, PLEASE REFER TO: 03172028

Mr. James J. Mergiotti, President & CEO
Peirce College
1420 Pine Street
Philadelphia, PA 19102

Dear Mr. Mergiotti:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Peirce College (the College). XXXXXX, the Complainant, alleges that the College discriminated against him on the basis of disability XXXXXX.

OCR enforces 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, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department. As a recipient of financial assistance from the Department, the College is subject to Section 504 and its implementing regulations.

Legal Standards:

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a College to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Under Section 504, a person is not a qualified person with a disability if the person poses a direct threat to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. *See* School Board of Nassau v. Arline, 480 U. S. 273, 287 (Section 504) and cf., 56 Fed. Reg. 35694, 35701 (July 26, 1991) (Title II preamble, adopting the direct threat principles of Title III of the ADA); 28 C.F.R. § 36.208 (Title III regulation). Under Section 504, the “direct threat” standard applies to situations where a college proposes to take adverse action against a student whose disability poses a significant risk to the health or safety of others. A significant risk constitutes a high

probability of substantial harm and not just a slightly increased, speculative, or remote risk. In determining whether a student poses a direct threat, the college must make an individualized assessment, based on a 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 policies, practices, or procedures will sufficiently mitigate the risk. OCR recognizes that the application of the “direct threat” standard may be modified in exception circumstances, such as situations where safety is of immediate concern. Under this analysis, it must be determined:

- Whether there was an individualized assessment of the Complainant’s conduct, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of risk, the probability that the potential injury will actually occur; and
- Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Following a proper determination of direct threat, an educational institution may take appropriate action, up to and including dismissal, against a student with a disability who poses a direct threat to the health and safety of others and it may require as precondition to a student’s return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g. followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional).

XX – paragraph redacted – XX

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement. The provisions of the agreement must be aligned with the complaint allegations and the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations. Consistent with OCR’s procedures, the College requested to resolve the issues in this complaint through a voluntary resolution agreement, which was executed on December 20, 2017. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University’s implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the College’s compliance with Section 504 and its implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 Complainant may file another complaint alleging such treatment.

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, it 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.

If you have any questions, you may contact investigator Josh Galiotto at (215) 656-8587 or by email at josh.galiotto@ed.gov.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosure

CC: Linda Hollinshead, Esq. *via email only*