



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

March 2, 2023

**IN RESPONSE, PLEASE REFER TO: 03212099**

**VIA E-MAIL ONLY: rcole@allegheny.edu**

Dr. Ron Cole  
President  
Allegheny College  
520 North Main Street  
Meadville, PA 16335

Dear Dr. Cole:

This letter is to advise you of the outcome of the complaint filed by the Complainant on March 1, 2021 with the U.S. Department of Education, Office for Civil Rights (OCR) against Allegheny College (the College). OCR investigated whether the College discriminated against the Complainant on the basis of his disability when, on or around XXXXXXXXXXXXXXXXXXXX  
XX  
XX.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance from the Department. As a recipient of federal financial assistance from the Department of Education, the College is subject to Section 504 and to OCR’s jurisdiction.

During its investigation, OCR reviewed information provided by the Complainant and the College, including email and text correspondence between the Complainant and College staff and among College staff, public safety reports, and the College’s policies and procedures for leave of absence/withdrawal. OCR also interviewed the Complainant.

XX  
XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Prior to OCR completing its investigation, the College expressed an interest in resolving the complaint pursuant to Section 302 of OCR’s Case Processing Manual (CPM). Section 302 provides that allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegation and OCR determines that it is appropriate to resolve the allegations because OCR’s investigation has identified concerns that can be addressed through a resolution agreement.

### **Legal Standard**

The Section 504 regulation, at 34 C.F.R. Section 104.3(j)(1), provides that an individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The regulation implementing Section 504, at 34 C.F.R. Section 104.4(a), further states that no qualified person 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 program or activity which receives or benefits from federal financial assistance. Pursuant to Section 504, at 34 C.F.R. Section 104.3(l)(3), with regard to post-secondary students, a “qualified” individual with a disability is one who meets the institution’s academic and technical standards for admission or participation in the academic program. In addition, the Section 504 regulation, at 34 C.F.R. Section 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 to which this subpart applies.

Under Section 504, an individual is not an “otherwise qualified” student with a disability, and a recipient may take adverse action against that student, when the student with a disability poses a significant risk to the health or safety of others and that risk cannot be sufficiently mitigated by reasonable modifications of policies, practices, or procedures that do not fundamentally alter the nature of the service, program, or activity. 34 C.F.R. Sections 104.3(l)(3), 104.4(b)(2), 104.44(a); *Sch. Bd. of Nassau Cnty. v. Arline*, 480 U.S. 273, 287-88 (1987) (interpreting Section 504). A recipient must engage in an individualized assessment based on reasonable judgment relying on the most current medical knowledge of the individual or the best available objective evidence. *Id.* This assessment must determine the nature, duration, and severity of the risk, the probability that the potentially threatening injury will actually occur. *Id.* The student must not be subject to adverse action on the basis of unfounded fear, prejudice, and stereotypes. 34 C.F.R. Section 104.4(b)(1)(i); *Arline*, 480 U.S. at 287.

Nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a direct threat to the health and safety of others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational program or activity. 34 C.F.R. Section 104.3(l)(3). In this circumstance, an educational institution may require, as a 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). 34 C.F.R. Sections 104.3(l)(3), 104.44.







## **Conclusion**

Before OCR completed its investigation of this complaint, pursuant to Section 302 of OCR's CPM, the College requested to resolve the case through a voluntary resolution agreement, and OCR determined such a resolution was appropriate. The College signed the enclosed Agreement on March 1, 2023, which when fully implemented, will address the evidence obtained and all of the allegations investigated in this complaint. The Resolution Agreement requires that the College: (1) revise its direct threat policies to require an individualized assessment based on a reasonable judgement that relies on current medical knowledge or on the best available objective evidence; (2) publish the revised direct threat policies upon OCR approval; (3) provide training to relevant College staff regarding the revised policies; and (4) develop a record-keeping system for documenting its actions related to direct threat assessments. OCR will monitor the College's implementation of the Agreement.

This concludes OCR's investigation of the complaint. This letter 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the College's cooperation in the resolution of this complaint. If you have any questions, please contact Spencer Plante at [spencer.plante@ed.gov](mailto:spencer.plante@ed.gov); 215-656-6022 or Catherine Nguyễn at [catherine.nguyen@ed.gov](mailto:catherine.nguyen@ed.gov); 215-656-5954.

Sincerely,

/s/

Catherine C. Deneke  
Supervisory Attorney  
Philadelphia Office

Enclosure

cc: Ian Binnington, Dean for Student Success; Jeffrey M. Weimer, Counsel, Reed Smith LLP