



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS**

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

**REGION V**  
ILLINOIS  
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MINNESOTA  
NORTH DAKOTA  
WISCONSIN

March 15, 2017

Dr. Dan Kinney  
President  
2700 College Road  
Iowa Western Community College  
Council Bluffs, Iowa 51501

Re: OCR Docket # 05-15-2072

Dear Dr. Kinney:

This is to advise you of the resolution of the above-referenced complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Iowa Western Community College (College). The complaint alleged that the College subjected Student A to discrimination based on disability (XXX). Specifically, the College took the following actions because of Student A's disability:

1. In August 2014, the College declined to renew Student A's XXX scholarship;
2. On September 2, 2014, the College removed Student A from all XXX classes and from the XXX program;
3. On September 3, 2014, the College prohibited Student A from XXXX;"
4. On October 7, 2014, the College suspended Student A for two years; and,
5. In fall 2014, the College failed to investigate Student A's complaint of discrimination based on disability.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 - 12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. As a recipient of Federal financial assistance from the Department and as a public entity, the College is subject to these laws.

During its investigation, OCR reviewed documents provided by Student A and the College. OCR also conducted interviews with Student A and College personnel, including: the Vice President of Student Services (VP-SS), the Vice President of Academic Affairs (VP-AA), the Dean of Student Life and Student Success (Dean-SLSS), the Dean of Communications and

Fine Arts (Dean-CFA), the Chair of the Judicial Review Board, and the XXX (Program Chair).

Based on its investigation, OCR determined that the College failed to provide Student A with a prompt and equitable response to her disability discrimination grievance in violation of with Section 504 and Title II regulations, at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b), respectively. Prior to the completion of OCR's investigation, the College agreed to take actions to resolve the remaining issues in the complaint.

### **College Policies and Procedures**

OCR reviewed the 2014-2015 Student Handbook (Handbook) and 2014-2015 College (Catalog). These documents are no longer available on the College's website; however, the 2016-2017 Catalog and 2015-2017 Student Handbook are available at <http://www.iwcc.edu/catalog.pdf> and [http://www.iwcc.edu/current\\_student/files/StudentHandbook.pdf](http://www.iwcc.edu/current_student/files/StudentHandbook.pdf).

#### *Nondiscrimination Notice*

The Handbook and Catalog contain an Equal Educational Opportunity and Non-Harassment statement (statement) that prohibits discrimination on the basis of mental and physical disability in admission and the administration of the College's policies, programs and facilities. The statement directs students with grievances to the Dean-SLSS, who is identified as the Equal Education Opportunity/Non-Harassment Coordinator. The Catalog and Handbook provide the office, address, and telephone number for the Dean-SLSS and the College's Equal Employment and Educational Equity Coordinators.

#### *Grievance Procedures*

The Handbook includes a Discrimination and Harassment Complaint Procedure. The procedure relevant to disability discrimination complaints provides that a complaint must be submitted in writing to the Dean- SLSS who will investigate the case and issue a written response within ten working days of receipt of the complaint. The Handbook, as revised for the 2015-2017 academic years, includes additional, successive reviews by the Vice President<sup>1</sup> and President. To seek further review of a complaint, the complainant must, within five days from receipt of the Dean-SLSS's written response, submit a written complaint to the Vice President, who will issue a final written decision within ten school days from the receipt of the written complaint. The complainant may appeal the Vice President's decision to the President within the five school days, and the President will issue a written decision within ten school days. Time limits may be extended by written mutual agreement of the parties or, if an administrator fails to respond within the prescribed time limits, the complainant may proceed to the next step. The Procedure and Nondiscrimination Notice do not include contact information for OCR's Chicago office.

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<sup>1</sup> The Handbook does not identify a particular Vice President.

The Handbook also includes a separate procedure for non-academic grievances. To resolve a non-academic grievance, the Handbook states: “(1) [t]he student should try to resolve the problem at the point of conflict, with the appropriate person or office; (2) [i]f the problem cannot be resolved at this level, the student should seek information and advice from the Dean-SLSS, Dean of Records and Registration, or the Dean of Advising and Academic Success; and (3) [i]f the concern is still not resolved [sic] the student may seek consultation with the [Vice President-SS].” The Vice President-SS may seek input from other college administrators in resolving the problem. The decision of the Vice President-SS is final and ends the grievance process.

*Student Code of Conduct, Discipline and Appeals Procedure*

The College’s Student Code of Conduct, Discipline and Appeals Procedure (SCCDA Procedure), set forth in the 2014-2015 Handbook, states that students are expected and required to follow college policies, rules and regulations and, not interfere with or disrupt the orderly educational process of the College.

The Student Code of Conduct portion of the SCCDA Procedure (Student Code of Conduct)<sup>2</sup> sets forth a non-exhaustive list of misbehavior that may be subject to disciplinary sanctions, including: use of the Colleges computer systems to engage in harassment or threats of violence; dangerous conduct that causes concern for the health and safety of oneself or others; engaging in behavior that disrupts the orderly, efficient, and disciplined atmosphere of the college or the college-sponsored activity; and any other willful or intentional inappropriate conduct.

The SCCDA Procedure provides that the VP-SS and VP-AA shall have the authority to immediately and summarily suspend any student on a temporary basis, when: (1) such student is alleged to have violated any provision of the Student Code of Conduct and (2) whose presence poses a continuing danger to persons and/or property, and/or who is an ongoing threat of disrupting the academic process. The student may be subject to an immediate temporary suspension from class(es), a program, an activity, a location on Campus, or the College. The SCCDA Procedure, as revised in 2015, also allows a Vice President or Dean to temporarily remove a student from a class, or other college-related facility for disciplinary reasons such as threats or actions which cause concern for the health and safety of others or for causing a major disruption or disturbance. A temporary suspension shall be followed by notice and an informal hearing before the appropriate Vice President or Dean as soon as possible. Depending on the circumstances, the temporary suspension may be continued until the completion of the disciplinary procedures.

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<sup>2</sup> The Catalog states that students who violate the Student Code of Conduct are subject to disciplinary sanctions, including administrative withdrawal from a single class or multiple classes, as well as registration restrictions at the course, discipline, or program level. Students who are administratively withdrawn for violations of the Student Code of Conduct are charged full tuition and fees for the classes from which they were withdrawn and will receive a “W” for the class or classes on their transcript.

The SCCDA Procedure contains detailed provisions governing notice of charges and student rights, an informal hearing, investigation of the charge(s) using the preponderance of the evidence standard and appeal procedures, including for review by a judicial review board. Time frames for each stage of the disciplinary proceedings are provided. Any student who is found to have violated a regulation governing student conduct will be subject to sanctions including reprimand, suspension of rights or privileges, suspension or expulsion from the College. The SCCDA Procedure states that students subject to these sanctions must be notified of their appeal rights.

### **Facts**

Student A first enrolled in the College in XXX. She declared a XXX major in the fall of 2013, and received a XXX scholarship for the spring 2014 semester. Student A advised OCR that she has XXX, and College staff, including the Program Chair who also served as Student A's academic advisor and, acknowledged that they were aware of her diagnosis. Student A's records indicate that she received academic adjustments – copies of instructor's notes, tape recorded lectures, extended test time, separate room for exams and quizzes, and flexible due dates – for her disability since 2012. Student A also received counseling services at the College during the 2013-2014 academic year. The College issued Student A an Associate Degree in General Studies in XXX.

#### *XXX Scholarship*

Student A's XXX scholarship for the 2014-15 academic year was not renewed. Student A maintains that she met the scholarship requirements – a GPA of 2.5 or higher and completion of required XXX service hours – but the Program Chair failed to renew her scholarship because of her disability. The Program Chair acknowledged that Student A met the GPA and service requirements,<sup>3</sup> but maintains that Student A's scholarship was not renewed because Student A told her in March, 2014, that she would not be returning to the XXX program in the fall. Student A denies telling the Program Chair that she would not be returning to the XXX Program. OCR found no documentation corroborating the withdrawal conversation.

In an email dated April 5, 2014, Student A informed College staff that she was considering dropping two courses; the Program Chair responded the following day to advise Student A that, if she dropped two classes, she would not be considered a full-time student eligible for a XXX scholarship. An April 7, 2014 email the Program Chair advised the scholarship office not to include Student A's name on the scholarship list. The Complainant told OCR she dropped only one of the two courses and indicated she remained a full-time student eligible for the scholarship.

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<sup>3</sup> The Program Chair indicated that all returning XXX majors who enroll full-time and meet the minimum GPA and service requirements are awarded a XXX scholarship provided the student requests that the scholarship be renewed and returns the acceptance letter.

According to the Program Chair, sometime in May, 2014, after the scholarships were issued for fall of 2014, Student A informed her that she had changed her mind and would be returning to the XXX program. On June 22, 2014, Student A emailed the Program Chair to inquire about why her scholarship was not renewed in light of the fact that she and the Program Chair discussed her continuation in the program as a full-time XXX major during her advisory meeting in May. The Program Chair responded to Student A's email to explain that, while Student A's name was not included on the April scholarship list, she was not "denied" a scholarship. The Program Chair told OCR that she informed Student A that she might be able to provide her scholarship funds in the fall [of 2014] if another student failed to meet the scholarship criteria or did not return to the XXX program. Subsequently, on July 7, 2014, Student A emailed the Program Chair to inform her that she was dropping out of the Program. Thereafter, on July 27, 2014, the Program Chair emailed Student A to confirm her understanding that Student A was not returning despite the fact that she had registered for XXX classes in the fall. On July 28, 2014, Student A emailed the Program Chair to notify her that she intended to resume her XXX studies.

The Program Chair told OCR that, because the XXX scholarships had already been awarded in April, Student A's request for a scholarship would not have been considered until the fall semester. She explained that she did not award additional scholarships over summer break per her usual practice of awarding such scholarships at the beginning of the fall semester. The Program Chair told OCR that Student A would have been awarded a XXX scholarship in the fall had she not been removed from the XXX program at the beginning of the fall semester.

OCR's review of email correspondence between the Program Chair and the College's scholarship office revealed that the list of scholarship recipients was revised during the summer. Student B, a non-disabled student, was removed from the scholarship list because he indicated that he no longer intended to be XXX major, and Student C, a non-disabled student, was issued a scholarship award letter after she contacted the scholarship department to inquire about why a XXX scholarship was not showing on her statement of account, noting that she was under the impression she was supposed to have received one. The Program Chair said Student C did not submit her paperwork in time for the spring 2014 deadline, but was given a scholarship for the fall 2014.

#### *Removal from the XXX Program*

According to the College, as early as January 2014, Student A exhibited inappropriate behavior in the classroom (*e.g.*, questioning instructors' abilities, engaging in XXX outreach after being asked not to do so), was disruptive during lectures and class activities, and sent frequent angry and inappropriate emails to faculty, staff and other students that contained personal information unrelated to her courses or school activities. Student A told OCR that she XXX during the spring semester of 2014.

Student A was XXX removed from the XXX. A review of Student A's emails indicates that, on March 27, 2014, Student A sent the Dean-CFA an angry regarding a campus speaker and

an inappropriate email to the Program Chair regarding her inability to attend XXX. Student A's statements in the email included: "you picked XXX on purpose for what you wanted;" "I always win;" and "in your face." The Program Chair forwarded the email to the Dean-CFA and Student A's counselor, noting that it "XXX" and that, "if [Student A] really has that much antipathy towards XXX and me, she's a ticking time bomb." The Dean-CFA responded to the Program Chair that Student should be removed XXX.

On March 28, 2014, the Dean-CFA emailed a letter to Student A informing her that she was removed from XXX effective immediately. The letter warned that, if she had any further outbursts, she would be removed from the XXX program. Student A emailed the Dean-CFA a response to the dismissal letter, acknowledging her inappropriate behavior and stating that XXX. The Dean-CFA told OCR that she discussed Student A's behavior with other administrators, but did not pursue further sanctions because the Program Chair felt Student A would be able to get herself together.

On March 30, 2014, Student A went to the Program Chair's home uninvited to seek reinstatement XXX. The Program Chair described Student A as very agitated. When the Program Chair did not want to take a packet that Student A prepared for her, Student A got off her bike and told her she had to take it. The Program Chair said she interpreted this behavior as aggressive, and reported the incident to the Dean-CFA because she was afraid.

On March 31, 2014, the Dean-CFA notified Student A in writing that she was in violation of College's Student Code of Conduct for engaging in "willful or intentional inappropriate conduct...which seriously threatens any educational process, operation or function of the College or, the health safety of any member of the academic community." The letter directed Student A to refrain from going to any staff member's personal residence or XXX. Student A was not issued a disciplinary sanction; however, the Dean-CFA recommended that she seek XXX. On March 31, 2014, the Dean-CFA also notified the President of Student A's actions and expressed concern that Student A may pay a visit to his home.

On April 2, 2014, Student A went to the Arts Center and yelled obscenities at staff and students XXX. Security was notified and the College issued an order on April 3, 2014, banning Student A from the Arts Center and parking lot on the dates XXX. Student A met with the Dean-SLSS on April 3, 2014, and they discussed her behaviors. Student A was provided written notice of the sanctions, which she signed. The Dean-SLSS told OCR that, at that point, the administration believed banning Student A from the Arts Center was sufficient to maintain safety.

On April 5, 2014, Student A sent the Program Chair an email about dropping her XXX classes. She explained that XXX. Additionally, Student A noted that she had fallen behind because of the emotional stress caused by her participation in XXX. Student A advised that she would not attend the class discussions about the assignment because it caused her emotional stress. The Program Chair noted that her concerns about the dark issues (e.g. death) in the XXX could be problematic as many XXX raise these issues; he suggested she speak with the Counselor about her concerns.

After an email exchanges with Student A about her failing grade on April 9 and 10, 2014, XXX (Instructor A) emailed the Program Chair expressing concern about student safety in light of Student A's recent inappropriate behavior in class, including not wanting to participate due to being traumatized by the subject matter (XXX). In response, the Dean-CFA provided the Program Chair with various grading options for Student A (e.g., withdrawal, incomplete) as well as potential additional security measures that could be taken if Instructor A continued to feel unsafe; however, no additional measures were utilized.

On July 7, 2014, Student A emailed the Program Chair to inform her that she was dropping out of the XXX program. Thereafter, Student A sent numerous inappropriate or incoherent emails to the Program Chair discussing personal and family issues. Student A also made numerous postings (approximately 100) on the XXX program's Facebook page that referenced death, dying, and other topics unrelated to any XXX. Student A continued to email the Program Chair about random topics unrelated to her classes, until the Program Chair asked her to stop on August 25, 2014.

On August 25, 2014, the Dean-CFA and Program Chair met with Student A to discuss several outbursts Student A had during the first week of class, including during XXX orientation, and to issue her a censure letter. According to the Program Chair, Student A paced and made inappropriate comments under her breath the entire time the Program Chair spoke during fall orientation, referred to the Program Chair as a "b----" and "evil," and told other students "you should be careful around her" and "don't listen to her." Student A acknowledged to OCR that she was loud in several classes and yelled out "bullshit," but denied all other inappropriate behavior. Student A told OCR that the Dean-CFA acknowledged XXX during the meeting; however, the Dean-CFA stated that the meeting was about her behavior, and insinuated to Student A that her behavior was not related to her XXX. The censure letter informed Student A that her outbursts were in violation of the Student Code of Conduct and warned that, if she continued to misbehave, she would be subject to progressive discipline. The also letter advised that she was at risk of being dropped from the XXX program.

On August 30, 2014, Student A went to the Program Chair's home uninvited for the second time to deliver personal writings (e.g., poetry, posters, collages, journals, handwritten notes) unrelated to her coursework. The Program Chair called the Dean-CFA over the weekend to report what had occurred. The Dean-CFA told OCR that the Program Chair stated that Student A appeared "angry and disheveled," and that her behavior, coupled with Student A's increasingly angry and hostile emails, made her feel threatened and in danger.

The Program Chair told OCR that Student A's behavior during the first week of class scared her. She explained that, when Student A made inappropriate comments in the past, she and Student A were able to "talk it out," but Student A's behaviors in the fall of 2014 had escalated and were increasingly angry. The Program Chair forwarded some of Student A's inappropriate email messages to the Dean-CFA, including one from September 1, 2014, in which Student A wrote about various people and their personal problems and indicated that

she needs help and the Program Chair did not care about her problems. In her message to the Dean-CFA, the Program Chair characterized Student A's email as disturbing and heartbreaking, and stated: "I think it can't be denied that she has an unhealthy fixation on me." She reported that other students complained that Student A's outbursts were disruptive.

On September 2, 2014, after consultation with the VP-SS and the Dean-SLSS, the Dean-CFA temporarily removed Student A from the XXX program due to her inability to control her behavior in and out of class, citing a disciplinary removal provision that provides for temporary removal of a student for "threat by words or actions which causes concern for the health and safety of others" or "any activities causing a major disruption or disturbance." An email on the same day indicated that the Dean-CFA attempted to arrange a meeting with Student A, but Student A wanted an attorney present and was not able to reach her attorney. Student A requested to go to her classes and promised to behave. The Dean-CFA denied her request, and informed Student A she was not to attend any XXX classes because she is no longer a student in the XXX program.

The Dean-CFA told OCR that she consulted with the VP-SS, Dean-SLSS, the Program Chair, the XXX Director, and other staff about her decision to remove Student A from the XXX program, but did not convene a meeting or consult with medical professionals familiar with Student A and her diagnosis. She also indicated that the College counselor did not participate in the decision to remove Student A. No other students were removed from the XXX Program during the 2013-14 or 2014-15 academic years.

XXX

On September 3, 2014, the College prohibited Student A from XXX. Student A reported that, when she arrived for XXX, the Program Chair met her at the door and told her the Dean-CFA and VP-AA would not allow her to XXX, and she left without incident. The Program Chair said she discouraged Student A from XXX in light of what occurred during XXX, and because Student A was no longer a XXX major.

Student A told OCR that that the VP-AA later said that she was not allowed to XXX because she was not a XXX major. Student A suggested that this reason is a pretext for discrimination because non-majors have participated in XXX. The Handbook, Catalog, and the audition sheet indicated that XXX are open to any student currently enrolled in the College. The College acknowledged that no other students were prohibited from XXX.

The College told OCR, and email documentation confirmed, that Student A alerted the Program Chair of her intention to XXX just as the College was in the process of developing a "no contact order," preventing Student A from having any contact with the Program Chair, who was the coordinator of XXX. On September 5, 2014, Student A was XXX.

*Student A's Suspension*

The VP-AA reported to OCR that Student A continued to email her poetry and writings many times a day throughout September 2014. The VP-AA said she found Student A's writings to be disturbing because they frequently referenced death. On September 30, 2014, the VP-AA sent Student A an email instructing Student A to cease emailing the VP-AA and staff if unrelated to coursework, noting that "the information can be interpreted as threatening and a violation of the Student Code of Conduct."

By letter dated October 7, 2014, the Dean-SLSS suspended Student A from campus for two years for engaging in multiple acts of willful or intentional inappropriate conduct that "seriously threatens any educational process, operation, or other function of the College or the health or safety of any member of the academic community." Student A's suspension letter indicated that incidents leading to her suspension include: behavior that culminated in dismissal from XXX on March 28, 2014; uninvited visits to the personal residence of the Program Chair; disruptive behavior on April 2, 2014, at the Arts Center; and her series of threatening emails to the VP-AA. An email dated October 7, 2014, confirmed the College also issued Student A a no-contact notice prohibiting her from initiating any contact with the Program Chair, Dean, and VP-AA including contact in person, through any social media source, by phone, instant messaging, email, text or by a third party and advised she was not allowed on campus.

In late August and early September 2014, the Dean-SLSS met with the Dean-CFA and the VP-SS prior to Student A's suspension to discuss their concerns about Student A's behavior. They discussed the Program Chair's fear that Student A was directing anger toward her, the emails sent to the VP-AA and other staff since the beginning of the year, and the numerous Facebook posts. They said that Student A's emails caused the staff to feel threatened due to the topics (e.g., death, suicide). Additionally, in late August and early September 2014 the Director of Student Life received multiple emails from Student A that were unrelated to his duties and discussed multiple topics (unsolved murders, reaching out to College staff, Facebook, etc.). Further, students in the XXX classes expressed concern about Student A's behavior to the Program Chair and a September 25, 2014 email from Student A to a fellow student referenced being kicked out of the XXX program by the Dean-CFA and her XXX.

The Dean-SLSS stated that the College did not consult with medical personnel familiar with Student A's diagnosis or the Disabilities Service Office to discuss potential academic or modifications for Student A in lieu of the suspension. Emails indicate that the College considered options for Student A to complete two remaining courses for a degree in another content area after she was removed from the XXX program, including allowing her to take either online courses or courses from another college that could be transferred back to the College. However, College staff could not recall why this option was not offered to Student A. The Program Chair told OCR that she believes Student A's XXX would have sufficiently XXX to complete a degree in another subject area once she was no longer a XXX major.

Student A appealed the suspension to the VP-SS, arguing that the letter of suspension was vague and the suspension should be modified due to her XXX which affects her XXX. On October 23, 2014, the Judicial Review Board affirmed the finding that Student A violated the

Student Code of Conduct, upheld the sanction and no contact order, and added a requirement that Student A petition for readmission (to the VP-SS).<sup>4</sup> Student A thereafter appealed to the President and, on October 31, 2014, the President upheld the decision and sanctions of the Judicial Review Board.

The College provided OCR with a list of 222 incidents involving other students who engaged in “threatening behavior” for the 2013-14 and 2014-15 academic years. Descriptions of incidents involving threatening behavior were wide-ranging and included: physical altercation, weapons, arrest for disorderly conduct, public intoxication, unauthorized check-in/guest policies, sexual misconduct (dating violence, stalking, sexual assault), verbal altercation, harassment, harassment/vandalism, disorderly conduct (noncompliance or noncooperation with staff), public intoxication/alcohol, fireworks, knives (over 2.5 allowed length), possession of illegal substance, robbery, social media threat, inappropriate behavior, hostile behavior, and threatening behavior. Three students were disciplined for the subcategory of threatening behavior; two were issued a no contact order and one was “evicted.” Another student who violated a no contact order was also evicted. The list does not indicate if the evicted students were also dismissed from the College.

During the 2013-14 and 2014-15 academic years, eight students, including Student A, were suspended by the College. Five students were found responsible for sexual misconduct and were suspended for three years, and two students were found responsible for an off-campus armed robbery and were suspended for two years. Student A was the only student suspended for disruptive and threatening behavior.

*Student A’s Disability Grievance(s)*

On September 2, 2014, Student A emailed the Dean-CFA to ask how to appeal her dismissal from the XXX program; her email states that she believes that she is “being dropped from the program due to behavior which stems from [] XXX that is documented with Disability Services Office.” She also emailed the Dean-SLSS to ask for another copy of the censure letter and stated that she believes she is “being discriminated against because of [her] XXX and will fight legally to maintain my status as a student.” The Dean-SLSS responded via email, acknowledged Student A’s intent to file a discrimination complaint, directed her to the Discrimination and Harassment Complaint Procedure found in the Student Handbook, and explained that Student A should submit a written complaint to her office. She also forwarded Student A a copy of the censure letter.

On September 3, 2014, Student A left a voicemail for the Dean-SLSS and then called her to request a hearing as soon as possible [regarding her dismissal from the XXX program]. The Dean-SLSS said she informed Student A that she must appeal to the VP-AA. The Dean-SLSS told OCR that she explained to Student A the difference between appealing a discipline

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<sup>4</sup> OCR was not able to review the documents related to the Judicial Review Board because those documents were not maintained by the College.

sanction and a discrimination grievance, and told her that, if she wished to file a discrimination grievance, she needed to put her discrimination complaint in writing.

On September 13, 2014, Student A sent the VP-AA an email concerning her dismissal from the XXX program. She identified her complaint as “one of discrimination” and said that she would follow-up with a written complaint the following week. On September 15, 2014, Student A emailed the VP-AA a “formal grievance against the [Dean], alleging that her removal was without due process and because of her XXX last spring.” The VP-AA told OCR that she treated Student A’s complaint(s) as a grievance against an employee, and did not consider it to be a discrimination complaint. She indicated that she spoke to the Dean-CFA about the decision to remove Student A from the XXX program, and confirmed that Student A’s behavior was disruptive to the educational environment. She acknowledged that she did not interview anyone, including Student A, and did not take notes of her conversation. On September 18, 2014, the VP-AA sent Student A a written determination finding her allegations to be “unfounded” and noted her appeal rights.

## **Legal Standards**

### *Disability Discrimination – Different Treatment*

The Section 504 implementing regulation, at 34 C.F.R. § 104.4(a), provides 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 from the Department. The regulations implementing Section 504, at 34 C.F.R. §§ 104.4(b)(1)(ii) and (iv), provide, in relevant part, that a recipient shall not deny a qualified individual with a disability an aid, benefit or service, or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual’s disability. The Title II regulation, at 28 C.F.R. § 35.130 (a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides, in relevant part, 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, counseling, financial aid or other extracurricular, or other postsecondary education aid, benefits, or services to which the subpart of the regulation regarding postsecondary education applies.

In determining whether an educational institution subjected a student to different treatment on the basis of disability in violation of Section 504 and Title II, OCR looks to whether there were any apparent differences in the treatment of similarly situated students on the basis of disability. If so, OCR assesses the recipient’s explanation for any differences in the treatment of similarly situated students to determine if the reasons are legitimate,

nondiscriminatory reasons and whether they are merely a pretext for unlawful discrimination. Additionally, OCR examines whether the recipient treated the student in a manner that was consistent with its established policies and procedures and whether there is any other evidence of disability discrimination.

*Direct Threat to Others*

The Section 504 implementing regulation, at 34 C.F.R. § 104.3(j), defines a person with a disability as a person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The Section 504 implementing regulation at 34 C.F.R. § 104.3(j)(2)(i)(B) defines a physical or mental impairment as including “any mental or psychological disorder.”

The Section 504 implementing regulation, at 34 C.F.R. § 104.3(l)(3), defines a qualified person with a disability, with respect to postsecondary and vocational education services, as a person with a disability who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity. Technical standards include all nonacademic eligibility criteria that an institution deems essential to participation in any of its programs, services, or activities. 34 C.F.R. pt. 104, App. A.

The Title II regulation, at 28 C.F.R. § 35.104, defines a direct threat as a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids or services as provided in § 35.139. The Title II regulation, at 28 C.F.R. § 35.139(a), does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others. The Title II regulation, at 28 C.F.R. § 35.139(b), provides that in determining whether an individual poses a direct threat to the health or safety of others, a public entity must make an individualized assessment, 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 the 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.

The Title II regulation, at 28 C.F.R. § 35.130(h), provides that a public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities. However, the public entity must ensure that its safety requirements are based on actual risks, not mere speculation, stereotypes, or generalizations about individuals with disabilities.

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 and procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making such modifications would fundamentally alter the college’s

program, service or activity. The Title II regulation, at 28 C.F.R. § 35.130(b)(8), states that a public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program or activity, unless such criteria can be shown necessary for the provision of the service, program or activity being offered.

*Grievance Procedures, 504 Coordinator, and Nondiscrimination Notice*

The Section 504 and Title II implementing regulations, at 34 C.F.R. § 104.7(a) and 28 C.F.R. § 35.107(a), respectively, require that recipients and public entities of a certain size designate at least one person to coordinate the recipients' efforts to comply with Section 504 and Title II. The Section 504 implementing regulation, at 34 C.F.R. § 104.8(a), requires identification of the responsible employee designated pursuant to 104.7(a), and the Title II implementing regulation, at 28 C.F.R. § 35.107(a) provides the public entity shall make available to all interested individuals the name or title, address, and telephone number of the employee or employees designated pursuant to that paragraph.

The Section 504 and Title II regulations, at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b), respectively, require that recipients and public entities of a certain size adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that prohibited by Section 504 and Title II.

The Section 504 regulation, at 34 C.F.R. § 104.8, requires recipients of a certain size notify participants, beneficiaries, applicants, employees that the recipient does not discriminate on the basis of disability in violation of Section 504. The notification will state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the nondiscrimination policy. The regulation implementing Title II, at 28 C.F.R. § 35.106, requires a public entity to make available to applicants, participants, beneficiaries, and other interested parties information regarding the provisions of Title II and its applicability to the services, programs, or activities of the public entity, and make such information available to them in such a manner as the head of the entity finds is necessary to apprise such persons of the protections against discrimination assured them by Title II.

**Analysis and Conclusion**

*Allegations 1 through 4*

Regarding the College's alleged failure to renew Student A's XXX scholarship, the evidence established that, although Student A met all of the eligibility requirements for a XXX scholarship, the Program Chair did not renew her scholarship in April 2014. The Program Chair told OCR that Student A's scholarship was not renewed in the spring because Student A informed her that she was not returning as full-time XXX student in the fall. The Program

Chair acknowledged that Student A later changed her mind and, in May, informed her that she would be returning as a full-time XXX major in the fall and wished to receive a scholarship. The Program Chair explained that Student A's scholarship was not renewed in May 2014, because the scholarships had already been awarded in April 2014, and her practice was not to award scholarships over the summer even if funds were available. However, OCR's investigation to date revealed that Student C, a non-disabled Student, was awarded a XXX scholarship in the summer.

Regarding Allegations 2 through 4, the evidence indicates that Student A engaged in increasingly inappropriate behavior. In the fall of 2014, Student A's misbehavior escalated and grew increasingly angry; she showed up to the Program Chair's home uninvited for a second time after being admonished not to do so, and sent numerous angry emails to the Program Chair and the VP-AA. The Program Chair characterized Student A's emails as disturbing and heartbreaking. The VP-AA reported that she was becoming concerned that Student A's frequent references to death in emails was an implicit threat.

The evidence indicated that the College attempted a variety of deescalating strategies before it decided to remove Student A from the XXX program and prevent her from XXX. The College issued Student A written warnings and censure letters in lieu of formal discipline; provided her counseling services through the College; removed her from XXX when her behavior became too disruptive to XXX; banned her from the Arts Center; and issued a no contact order in lieu of removing her from the XXX program. However, the evidence was unclear as to whether the College considered modification of policies, practices or procedures, or providing auxiliary aids or services before it suspended her from the College. The College provided some emails suggesting that administrators considered allowing Student A to complete her degree in another major by completing two remaining course requirements online or at another college, but none of the administrators could recall why his option was not pursued. The Program Chair told OCR that she agreed that Student A should not have been allowed to complete her XXX degree, but she thought that Student A's XXX would sufficiently XXX to complete a degree in another area once she was no longer a XXX major.

The evidence also established that Student A was removed from the XXX program and prevented from XXX in early September 2014 and suspended from campus for two years in October, 2014. In taking these steps, the VP-SS, Dean-SLSS, VP-AA, Dean, and Program Chair discussed Student A's behavior, and took into account the content of her emails. The evidence indicated that the College was aware that Student A was XXX due to XXX on September 5, 2014. However, OCR found no evidence indicating that staff consulted with an appropriate medical professional about the risks associated with Student A's behavior.

Prior to the conclusion of OCR's investigation, the College expressed interest in resolving Allegations 1 through 4 of the complaint. In accordance with Section 302 of OCR's *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint.

*Allegation 5*

OCR found sufficient evidence that the College failed to provide Student A a prompt and equitable response to her disability discrimination grievance when it did not investigate it. The evidence established that Student A emailed the Dean-CFA and the Dean-SLSS to complain that she was dismissed from the XXX program due to behavior related to her XXX. The Dean-SLSS directed Student A to the grievance procedure in the Student Handbook and told her to file a written complaint. Thereafter, Student A emailed the VP-AA to inform her that her complaint was one of discrimination and, two days later, emailed a formal grievance alleging, among other things, that her removal was because of her XXX. Despite Student A's unequivocal statements that her grievance was alleging disability discrimination, the College nevertheless treated her complaint as a general grievance against an employee, and not one of discrimination. The College did not investigate whether Student A's disability was the reason for her dismissal from the XXX program, and therefore, did not provide Student A with a prompt and equitable investigation. Accordingly, OCR concluded that the College did not comply with Section 504 and Title II regulations, at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b), respectively.

On March 8, 2017, the College signed the enclosed Resolution Agreement (Agreement), which when fully implemented, will resolve the issues raised in the complaint. OCR has ensured that the Agreement is aligned with the violation identified, the complaint allegations and the information obtained during the investigation so far, and is consistent with the applicable regulations. The Agreement requires the College to take the following actions:

- Review and revise, as necessary, its policies, practices and procedures regarding any person with a disability who may pose a direct threat to the health and safety of others in order to ensure compliance with Section 504 and Title II, specifically 28 C.F.R. § 35.104 and 28 C.F.R. § 35.139 (a) and (b).
- Review and revise, if necessary, its notice of nondiscrimination and grievance procedures to ensure that the College's policies and procedures meet the requirements of the regulations implementing Section 504, at 34 C.F.R. § 104.8, and Title II, at 28 C.F.R. § 35.106.
- Review and, revise its grievance procedures to ensure that the College's grievance procedure meet the requirements of the regulations implementing Section 504, at 34 C.F.R. § 104.7(b), and Title II, at 28 C.F.R. § 35.107(b).
- Establish a record keeping system for disability discrimination complaints, including a dated copy of the grievance, copies of investigative documents or interviews, a copy of the dated written notice provided to both parties of the final determination, including any findings and applicable sanctions, and, if applicable, any appeal determination.

- Provide effective training on its revised policies and procedures to appropriate personnel of the College, including College personnel involved in determining whether a disabled student poses a direct threat to the health and safety of others and the discipline of such students, and those who are directly involved in processing, investigating, and/or resolving complaints or other reports of discrimination.
- Provide training on the grievance procedures to all staff directly involved in processing, investigating, and/or resolving complaints of disability discrimination or reports of disability harassment.
- Repay Student A's loans for the 2014-2015 academic year and reimburse her for her out-of-pocket expenses, and, if Student A elects to re-enroll in the College, credit Student A's account with \$1800.00 to compensate her for loss of the fall 2014 XXX scholarship.
- Expunge all references, if any, to Student A's interim two-year suspension from Student A's records that could be released to third parties.

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. OCR will monitor the Agreement to ensure compliance.

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 file a private suit in federal court whether or not OCR finds a violation.

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, 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.

OCR wishes to thank the College and its counsel, including Scott P. Moore, for the cooperation extended to OCR during the course of this investigation. If you have any questions or concerns about OCR's determination, you may contact Ms. Sandy Garcia, Senior Equal Opportunity Specialist, at (312) 730-1580 or [Sandy.L.Garcia@ed.gov](mailto:Sandy.L.Garcia@ed.gov), or Melissa M. Howard, Attorney, at (312) 730-1527 or [Melissa.Howard@ed.gov](mailto:Melissa.Howard@ed.gov).

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Sincerely,

Marcela Sanchez-Aguilar  
Supervisory Attorney

cc: Scott P. Moore, Esq.