



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

230 SOUTH DEARBORN ST., 37<sup>TH</sup> FLOOR  
CHICAGO, IL 60604

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August 15, 2022

Dr. Ron Dempsey  
President  
Oakland City University  
Sent via electronic mail to [President@oak.edu](mailto:President@oak.edu)

Re: OCR Docket #05-21-2175

Dear Dr. Dempsey:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed against Oakland City University (University) alleging discrimination on the basis of disability.

The complaint alleges that the University discriminated against a graduate student (Student A) on the basis of disability (XXXXXX) in XXXXXX when it removed him from in-person instruction in his XXXXXX program.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the University is subject to Section 504.

During its investigation, OCR reviewed documentation provided by Student A and the University and interviewed Student A and University personnel. For the reasons explained below, OCR concludes that the evidence establishes that the University failed to comply with the applicable Section 504 regulations with regard to the allegation.

**Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.3(j)(1), defines an individual 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(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 Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

The Section 504 regulation, at 34 C.F.R. §104.4(a), provides, in part, that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department.

The Section 504 implementing regulation, at 34 C.F.R. § 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 the subpart of the regulation regarding postsecondary education applies. The Section 504 regulation, at 34 C.F.R. § 104.43(c), states that a recipient to which this subpart applies may not, on the basis of disability, exclude any qualified student with a disability from any course, course of study, or other part of its education program or activity.

The Section 504 regulation, at 34 C.F.R. § 104.44(a), requires recipients to make such modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student.

A university must also reasonably modify policies, practices, and procedures where necessary to avoid discrimination against students with disabilities, unless making such modifications would fundamentally alter the university's program, service, or activity. A university may impose legitimate safety requirements that are necessary for the safe operation of a service, program, or activity. However, the university must ensure that its safety requirements are based on actual risks and not on mere speculation, stereotypes, or generalizations about people with disabilities and may not disguise a discriminatory purpose.

### **Facts**

In April 2020, Student A enrolled in the University's XXXXXX program. Although he has been diagnosed with XXXXXX, Student A did not register with the University as an individual with a disability or request any modifications or adjustments for his disability.

In XXXXXX, Student A began working as XXXXXX at the University. Student A's employment supervisor (the Supervisor) told OCR that in XXXXXX, he heard Student A and another employee (Employee A) engaged in a heated, loud exchange in the office. The Supervisor said that neither Student A nor Employee A used foul language or threats during the argument. Prior to this incident, Student A had not been counseled or otherwise disciplined in connection with his University employment.

The Supervisor held a mediation session between Student A and Employee A to address the incident on XXXXXX. According to the Supervisor, Student A left the mediation session abruptly, complaining that the Supervisor was taking Employee A's side in the dispute.

The Supervisor said that approximately 45 minutes later, he, the University President, and the Human Resources Director (HR Director) received an email from Student A with his official 30-day employment resignation notice. The Supervisor said that in the days following his resignation, Student A shared confidential information, sent boastful emails and began deleting important work-related documents from the University servers. Student A told OCR that after he resigned, he sent “blunt” emails to his colleagues regarding his resignation, deleted files from the University’s computer system, and took pictures of University files.

On XXXXXX, Student A attended a meeting with the Supervisor and the HR Director. The Supervisor said that he and the HR Director gave Student A an employment termination letter and informed him of the reasons for his termination. The Supervisor said that during the meeting Student A called him a “poor leader” and began to aggressively slam his hands on the desk. He said Student A stood up “very aggressively” and loudly called names. Student A said he argued with his Supervisor and the HR Director during the meeting, and they demanded that he return his University equipment that day.

Student A said he had left his University keys at home, so he drove home to get them with the Supervisor and the HR Director following him to his home. According to the Supervisor, as they were leaving, Student A made critical comments about the Supervisor and the program.

The Supervisor said the drive to Student A’s house took XXXXXX. He said that when they arrived at Student A’s home, Student A’s demeanor had totally changed and Student A apologized for his behavior, shook his hand, and told him “You are a better man” and “You are going to go on and do great things.” Student A also said that at his home, he apologized to the Supervisor and HR Director for his behavior during the termination meeting. The Supervisor said he was surprised by the change in Student A’s demeanor.

Student A asked the Supervisor if his status as a student would be affected by his termination as an employee. Student A told OCR the Supervisor said his status as a student would not be affected, but the Supervisor said he told Student A that nothing had been determined regarding his status as a student. The Supervisor told OCR that at this time, he had not discussed Student A’s status as a student with any other University personnel.

The Supervisor said that on XXXXXX, the Dean of the School of XXXXXX (Dean) sent him a text message requesting a meeting to discuss Student A. He met with the Dean and the Graduate Director the following morning. According to the Supervisor, during the XXXXXX meeting the Dean said they were aware of Student A’s “aggressive behavior” and “Jekyll and Hyde” personality as a University employee. The Supervisor said that the Dean and Graduate Director expressed concerns about allowing Student A to continue in his academic program, as they were afraid that Student A might criticize University administration to students and might get into an altercation with another student in the classroom. The Supervisor reported that the Dean and Graduate Director said they believed that Student A should attend classes online going forward.

The Graduate Director told OCR that the Supervisor had contacted her to report Student A’s behavior during the termination meeting. She said that the Supervisor told her that he had concerns about allowing Student A to continue in his academic program, and she shared his

concerns about Student A attending class due to his emotional outbursts and that he appeared to swing between very angry and very cordial moods in a short time. The Supervisor denied reporting Student A's behavior to the Dean or the Graduate Director.

The Graduate Director said that she decided, along with the Supervisor and the Dean, to require Student A to attend the final class session in the current academic session online. She said she also thought Student A should not attend the next academic session in person to give him some time to "emotionally accept everything" and to give him a "cooling off period"; however, she said she did not have authority to make that determination. The Supervisor said that he did not make a determination regarding Student A's removal from in-person learning.

According to the University, the Supervisor requested a meeting with the Associate Vice President (Associate VP) and the Vice President of Administration (Vice President) regarding Student A on XXXXXX. The Supervisor said he told the Associate VP and Vice President that he felt threatened during the termination meeting when Student A slammed his hands on the desk and stood over him.

Also on XXXXXX, the Graduate Director called Student A to inform him that he could not attend his final class session in the current academic term in person because of his behavior during the termination meeting and that she made arrangements for him to attend the class online. She did not advise him at the time of specific charges against him or a process to challenge this decision. Student A said the Graduate Director also told him he likely would not be allowed to attend the next academic term in-person. Student A and the Graduate Director both said he told her that he did not want to attend class online and wanted to remain with his in-person cohort. The Graduate Director said she told Student A that it was not in her purview to decide whether he could attend online or in person for the next academic term and that the Behavioral Intervention/Threat Assessment Team (Team)<sup>1</sup> would make this determination. The Graduate Director said that she and the Dean referred Student A to the Team to determine whether Student A should attend the next academic term online or in person.

The same day, Student A sent an email message to the University President, asking him to overturn the Graduate Director's decision requiring him to attend his last class session of the term online. In this email, Student A stated that he has had XXXXXX since his XXXXXX. Student A also stated that attending class online, without the personal interaction with his cohort, may exacerbate his XXXXXX. The University President responded to Student A's email the same day stating that he would look into it and respond to him the following week. Later that evening, Student A e mailed the University President that he was seeking legal counsel and that they probably should not communicate further.

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<sup>1</sup> The University told OCR that it does not have a formal policy regarding the Team's operations. The original proposal for the Team developed in 2015-2016 describes the Team as "an interdepartmental working group that coordinates the support services of [the University] in order to assist members of our community who have displayed troublesome behaviors on or off campus." The proposal said the Team would provide "early intervention for students, faculty and staff members experiencing severe distress or engaging in harmful/disruptive behaviors." The University's website, at <https://www.oak.edu/forms/behavioral-intervention-and-threat-assessment-referral-form/>, contains a behavior threat assessment referral form.

The Associate VP said that on XXXXXX, he convened the Team meeting concerning Student A; the Counselor, a University Police Officer, the University Campus Pastor, the Vice President, the Dean, and the Graduate Director attended the meeting.<sup>2</sup> The Associate VP said that the Vice President relayed to the Team what the Supervisor had said about Student A's behavior during the termination meeting. The Associate VP said that the Vice President told the Team that the Supervisor described Student A's behavior as "threatening" and "paranoid." The Graduate Director said she also described her phone conversation with Student A regarding attending his final class session online. The Dean and Graduate Director told the Team that they were concerned that Student A was a threat to the educational environment, and they wanted to make sure the campus was safe. The Team did not meet with the Supervisor or Employee A.

The Associate VP said the Team was concerned about Student A's "belligerent" and "aggressive" behavior as an employee and did not believe he should attend in-person classes in his graduate program. The Counselor said that she recalled that there was a lot of discussion about Student A's behavior on XXXXXX, including the severity of his highs and lows and how he "verbally exploded on people" and then quickly apologized a few minutes later. The behaviors in question related to the argument with Employee A, the interactions during the mediation session and the termination meeting, and associated email messages. The Team did not have, and thus did not consider, information about any disruptive conduct Student A engaged in as a student. The Associate VP said the Team decided that two members of the Team would meet with Student A prior to making a final determination about whether to allow Student A to continue to attend classes in person. The Associate VP said the Team members were unaware that Student A had XXXXXX, and the Counselor stated that she did not recall any discussion of Student A's XXXXXX during the meeting. The Team did not review any medical documentation during the XXXXXX meeting.

The written summary of the Team's XXXXXX meeting said the Team was concerned about Student A's behavior related to his employment, described as "belligerent, short tempered, threatening, forgiving and paranoid." The summary also noted that Student A made disparaging remarks about his Supervisor and University staff to students in his cohort, which they determined posed a threat to the retention and future recruitment of students. The written summary also said the Team determined that Student A would be required to attend his final class session in the current academic term online, to attend the next academic term online, and to provide XXXXXX. The summary did not address the fact that Student A had not exhibited any threatening behavior as a student.

The Associate VP and the Counselor met with Student A remotely on XXXXXX. The Counselor said that she and the Associate VP met prior to the XXXXXX meeting, discussed Student A's inappropriate behavior, emails and interactions with University employees, and, utilizing her mental health certification and his expertise in student interactions, decided prior to the meeting that Student A would be prohibited from attending in-person courses for the next term. She said that, although they had already decided that he could not attend in-person classes, they nonetheless wanted to hear from Student A.

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<sup>2</sup> The Counselor told OCR that the Team members do not receive any specific training regarding the Team's operations.

Student A said that he received notice from the Associate VP on XXXXXX, of a wellness check meeting but was not informed that the Team wanted to conduct a threat assessment to determine whether he could attend classes in person or that the Team had met about his behavior earlier in XXXXXX. The Associate VP said that he and the Counselor introduced themselves at the XXXXXX meeting with Student A as members of the Team and told him that they wanted to meet with him regarding the “meltdown” with his Supervisor. Student A said that the Associate VP and Counselor said they wanted to check in with him to see if he was okay because they were aware of his XXXXXX and the termination of his employment. The Associate VP said Student A volunteered that he had XXXXXX and had a history of XXXXXX, the Counselor said Student A also shared that he had XXXXXX but Student A said he told them he did not currently have any issues with XXXXXX. The Associate VP said he asked Student A what type of supports he had in place and Student A said he had a XXXXXX. The Counselor said they also discussed what they thought would help Student A moving forward and offered him XXXXXX. She said they discussed the option of Student A taking the next academic term online, pending an evaluation from his XXXXXX but Student A did not want to take his courses online.

The Associate VP said they told Student A that they needed to be sure there were not going to be any other incidents and asked Student A to sign a XXXXXX. He said that they also asked him to submit XXXXXX. The Associate VP said Student A said he was no longer comfortable with the direction of the discussion and ended the meeting. Student A said that when the Associate VP and Counselor asked him to sign a XXXXXX and submit XXXXXXXX, he began to feel uncomfortable. He said that the Associate VP told him that he was being removed from his in-person cohort for the next academic session because “he did not exhibit the characteristics of a University student.”

The Associate VP said the information he learned during his meeting with Student A, namely Student A’s history of XXXXXXXX and his concern of the possibility that Student A may engage in disruptive behavior in the academic arena led him to believe that the University had an obligation to make the community safe, put necessary safety measures in place and require Student A to complete online courses until he submitted XXXXXX.

The Counselor said she thought it would be helpful for Student A to sign disclosure forms to obtain information from his XXXXXXXX prior to conducting a threat assessment. She said Student A agreed to provide XXXXXX, but he did not submit the documentation.

The Counselor stated that the Supervisor, Dean, and Graduate Director expressed a concern that Student A was going to XXXXXX, based on his behavior and communication with his Supervisor on XXXXXX. She also said that the emails from Student A to other University faculty and staff, which she did not review, were concerning because of the nature of the emails, saying that the University would be “ruined.”<sup>3</sup> The Counselor stated that Student A’s admission that he had XXXXXX since XXXXXX supported their determination that Student A was a XXXXXX.

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<sup>3</sup> In the emails, Student A characterized the program and its management and leadership as a joke, which is what would lead to it being “ruined.”

The Associate VP said that he did not re-convene the Team to share the information from the XXXXXX meeting with Student A. He said that he was waiting to review XXXXXX, which Student A did not submit to the Team.

Student A said that he emailed the Graduate Director that he intended to attend his classes in person at the start of the next academic session, which began on XXXXXX. By letter dated XXXXXX, the Associate VP informed Student A that he was prohibited from attending in-person instruction and that, as a result, there was no need for Student A to come to the campus since he would be receiving instruction online.

Student A reported and the University confirmed that Student A did not have any disciplinary issues as a student. The University informed OCR that two students, both of whom were non-disabled, were removed from in-person learning; one student was removed for inappropriate social media posts and the other student engaged in a physical altercation with another person, which violated his probation.

Student A did not return to the University; he enrolled in another university in XXXXXX. Student A informed OCR he does not wish to return to the University.

### **Analysis and Conclusion**

The investigation revealed that after Student A displayed inappropriate behavior in connection with his employment on XXXXXX, the University prohibited him from attending in-person instruction for the final session of his class in XXXXXX and for the next academic term as well. On XXXXXX, the University informed Student A that he was to attend class online and also was told he need not come to campus. However, the University imposed this prohibition without following proper procedures to make an individualized threat assessment using the best objective evidence that Student A posed an imminent risk of substantial harm that cannot be reduced or eliminated with mitigating measures.

Testimony and written documentation indicate that the University excluded Student A from in-person classes because administrators were concerned that Student A might XXXXXX and would disparage the University's reputation. However, OCR found no evidence that Student A XXXXXX, during his employment or as a student. The investigation revealed that the University failed to conduct an individualized XXXXXX prior to banning him from in-person instruction and stating that he had no reason to return to the campus, deviating from the University's usual practices. The evidence revealed the University made the determination to exclude Student A prior to meeting with Student A and giving him an opportunity to explain himself. The University also did not consider possible mitigating measures to address its concerns, other than prohibiting Student A from attending classes in person. The evidence indicates that the University based its decision on disability-based generalizations and stereotypes, rather than an individualized assessment, including assuming Student A's statement regarding XXXXXX, in light of his XXXXXX, was an admission that he was a XXXXXX.

Based on the above, OCR finds that the University violated Section 504 when it removed Student A from in-person instruction in his XXXXXX program.

The enclosed Resolution Agreement (Agreement), when fully implemented, will address the non-compliance. The provisions of the Agreement are aligned with the allegation in the complaint and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's resolution activities regarding the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The 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.

It is also important for you to understand that the laws OCR enforces also prohibit the University from harassing, coercing, intimidating, or discriminating against an individual because the individual filed a complaint or participated in the complaint resolution process. If this happens, the individual may file a complaint against the University with OCR.

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 privacy.

The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We wish to thank you and University personnel and especially Mr. Mike Schiff for the cooperation and courtesy extended to OCR during its investigation. If you have any questions, please contact Camille D. Lee, Civil Rights Attorney, at 312-730-1709 or by email at [Camille.Lee@ed.gov](mailto:Camille.Lee@ed.gov).

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Mr. Mike Schiff (sent via email only to [mschiff@zsws.com](mailto:mschiff@zsws.com))