

Resolution Agreement

Docket # 07142029

The Ozarks Technical Community College (College), Springfield, Missouri, submits this Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve this complaint that was filed under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation, 34 Code of Federal Regulations (C.F.R.) Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35.

The College agrees to take the below actions. However, nothing in this Agreement constitutes an adverse finding against the College. Further, nothing in this Agreement constitutes an admission of liability by the College.

PROCEDURAL REMEDIES

1. By November 10, 2014, the College will revise its Student Discipline, Grievance, and Appeal Procedures to include the following:
 - a. An explanation of the use of polygraph test results in student disciplinary investigations and appeals, including if a polygraph test will be administered by the College, if polygraph results will be considered if submitted by students, under what circumstances a polygraph will administered, who will administer the polygraph, and the intended use of the results; and
 - b. a requirement that the Dean of Students or other designated administrator conduct a complete investigation of each alleged violation of a Board of Trustees policy, college procedure, or administrative rule involving the student discipline investigation, grievance, and/or appeal procedure to include, at a minimum, interviews of all witnesses identified by the individuals involved in the incident and a written summary of their testimony and/or a copy of a written statement, a review of all relevant records and documents and a copy of all relevant documents, a review of photographs and other physical evidence, a review of security video footage, if any, and a written decision describing the information considered and the results of the investigation.
 - c. Notice provided to students that the College will grant students with disabilities a reasonable amount of additional time to appeal a disciplinary determination when a student's disability impacts or limits the student's ability to appeal a disciplinary

determination within the timeframe designated for such an appeal in the College's disciplinary appeal procedure;

- d. Identification of any other circumstances under which the College will grant an extension of the timeframe for appealing a disciplinary determination; and
- e. A process through which students, with and without disabilities, may request an extension of the timeframe for appealing a disciplinary determination, including whether the request must be in writing or may be made verbally, to whom the request must be made, what information must be provided in support of the request, a timeframe within which the College will grant or deny the request, and written notification to the student of the College's decision regarding the request for an extension of time to appeal a disciplinary determination. If the College grants an extension, the written decision will include the length of the extension and the new date by which the student must appeal the disciplinary determination in question.

REPORTING REQUIREMENT:

By November 14, 2014, the College will provide OCR a copy of its revised Student Discipline, Grievance, and Appeal Procedures for review and approval.

2. After receiving OCR's approval of the College's revised Student Discipline, Grievance, and Appeal Procedures, the College will publish the revised disciplinary, grievance, and appeal procedures in its student handbook and catalog, at the next regular publishing of the student handbook after January 1, 2015 and will publish the revised procedure on the website within 60 days of receiving OCR's approval of the revised procedure.

REPORTING REQUIREMENT:

Within 30 days of publishing the revised Student Discipline, Grievance, and Appeal Procedures in the handbook and catalog, the College will provide OCR a copy of its student handbook and catalog containing the revised Student Discipline and Grievance Procedures. Within 30 days of publishing the revised Student Discipline, Grievance, and Appeal Procedures on the website, the College will provide the OCR a link to each location on the College's website where the revised Student Discipline, Grievance, and Appeal Procedures are published.

3. Within 90 days of OCR's approval of the College's revised Student Discipline, Grievance, and Appeal Procedures, the College will provide training on the revised procedures for all faculty, staff and administrators who are involved in conducting

disciplinary investigations, making disciplinary determinations, and deciding disciplinary appeals. The training will cover, at a minimum, conducting a thorough investigation; gathering and considering corroborating evidence; determining witness credibility when necessary; weighing the evidence; maintaining objectivity during the investigation and the decision-making process for disciplinary determinations and appeals; providing an independent and objective appeal process; and documenting the discipline and appeal process provided to each student accused of a disciplinary infraction.

REPORTING REQUIREMENT:

Within 30 days of the training required by item 3, the College will provide OCR documentation of the training. The documentation will include the date of the training, the name and qualifications of the trainer, a copy of the material used at the training (notes, the outline, a PowerPoint presentation, handouts, etc.), and a sign in sheet indicating the names and positions of all training participants.

INDIVIDUAL REMEDIES

4. By December 1, 2014, the College will rescind its XXXXX XX, 2013 finding that the Complainant was responsible for “XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX” and modify its disciplinary determination to find the Complainant responsible for disrupting the learning environment of the Student XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Dean of Students will determine whether a no contact order and censure are appropriate disciplinary sanctions for the Complainant’s commission of the infraction of disrupting the Student’s learning environment. When determining the appropriate sanction(s), the Dean of Students will consider the College’s disciplinary policy and procedures, as well as the College’s history and practice regarding the imposition of sanctions for disrupting a student’s learning environment or for conduct similar to the Complainant’s but which has been characterized by the College as a different disciplinary infraction. However, the College is not required to initiate a new investigation regarding the factual allegations giving rise to the issues addressed in the College’s XXXXX, XX, 2013 letter/findings. The Dean of Students may rescind neither, one, or both of the sanctions (no contact order and censure) imposed on the Complainant in the XXXXX XX, 2013 letter. The Dean of Students shall not impose any disciplinary sanctions other than a no contact order and/or censure upon the Complainant for disrupting the learning environment of the Student in connection with the events leading up to the College’s XXXXX XX, 2013 letter/findings, unless the College has a documented history of imposing sanctions other than a no contact order and/or censure for disrupting the learning environment of a student or for conduct similar to the Complainant’s but which has been characterized by the College as a different infraction. The College

will not discriminate against the Complainant on the basis of disability or retaliate against her for engaging in a protected activity in sanctioning her for disrupting the learning environment of the Student. The College will notify the Complainant in writing of its revised determination that the Complainant was not responsible for “XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX” but that she was responsible for disrupting the learning environment of the Student on campus XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, and the disciplinary sanction(s), if any, as a result of that conduct.

However, nothing in this Agreement prevents the College from imposing disciplinary sanctions upon Complainant in the event Complainant violates the College’s policies and/or procedures in the future.

REPORTING REQUIREMENT:

By January 12, 2015, the College will provide OCR a copy of its letter to the Complainant notifying her of its revised determination that the Complainant was not responsible for “XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX” but that she was responsible for disrupting the learning environment of the Student on campus XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX and the disciplinary sanction(s), if any, as a result of that conduct.

By January 12, 2015, the College will provide OCR with a detailed explanation of the basis for the disciplinary sanction(s), if any, imposed upon the Complainant pursuant to item 4 above. The College will provide OCR with a copy of the Student Conduct/Judicial report for each instance in which a student was disciplined for disrupting the learning environment of another student or for conduct similar to the Complainant’s which was characterized by the College as a different disciplinary infraction during the 2012-13, 2013-14, and 2014-15 academic years.

5. By January 12, 2015, the College will remove from the Complainant’s permanent educational records any mention that she was responsible for any misconduct or violation of College policy or rules related to the XXXXX XX, 2013 letter/findings or events giving rise to the same other than disrupting the Student’s learning environment XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The College is not required to remove from Complainant’s permanent educational record any information about incidents prior to the incident giving rise to the XXXXX XX, 2013 letter/findings where she violated College policy, rules or procedures. Further, the College is not required to refrain from addressing any future violations of College policy, rules, or procedures Complainant may have. The College is also not required to remove from Complainant’s permanent educational records information about violations of

College policy, rules or procedures concerning incidents that may arise after the XXXXX XX, 2013 letter/findings (or any appeals regarding the same).

REPORTING REQUIREMENT:

By January 12, 2015, the College will submit an affidavit from a knowledgeable individual indicating he/she has verified there is no mention in any of the Complainant's permanent educational records that she was responsible for any misconduct or violation of College policy or rules other than disrupting the Student's learning environment by calling him out of class to speak with him in connection with the events leading up to the College's XXXXX XX, 2013 letter/findings. The affidavit will identify the permanent records reviewed by the affiant.

6. By January 12, 2015, the College will notify the Complainant in writing of her right to appeal the disciplinary sanctions imposed pursuant to item 5 above under the College's revised appeal procedures. With the written notice, the College will provide the Complainant with a copy of the College's revised appeal procedures, including a description of the process the Complainant should follow to request additional time to appeal any disciplinary sanction based on her disability or other permissible reason under the revised appeal procedure, and contact information (name, business address, business email address, and office phone number) for the individual responsible for handling disciplinary appeals.
7. If the Complainant appeals the disciplinary sanctions imposed pursuant to item 5 above, the College will consider and determine her appeal pursuant to its revised disciplinary appeal procedures. The College will not discriminate against the Complainant on the basis of disability or retaliate against her for engaging in a protected activity in any way during the course of her appeal or in the manner in which it considers and determines her appeal.

REPORTING REQUIREMENT:

By March 2, 2015, the College will provide OCR a copy of each of the following documents, if applicable: the Complainant's appeal of the disciplinary sanctions imposed pursuant to item 5 above, her request for an extension of time to appeal the disciplinary sanctions, the College's decision regarding the Complainant's request for an extension of time, and the College's decision regarding the complainant's appeal.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the College has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.4(a) and (b)(i)(ii)(iii)(iv) and (vii), and 104.61; the Title II regulations at 28 C.F.R. §§ 35.130 and

35.134; and the regulation implementing Title VI of the Civil Rights Act of 1964 at 34 C.F.R. § 100.7(e), which were at issue in this case.

The College understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the College understands that during the monitoring of this Agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 at 34 C.F.R. §§ 104.4(a) and (b)(i)(ii)(iii)(iv) and (vii), and 104.61; the Title II regulations at 28 C.F.R. §§ 35.130 and 35.134; and the Title VI regulation at 34 C.F.R. § 100.7(e), which were at issue in this case.

The College understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the College written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Recipient Official (Name and Title)

Date