

**Resolution Agreement
Butler Community College
Docket # 07142223**

The U.S. Department of Education, Office for Civil Rights (OCR), conducted a complaint investigation of the Butler Community College, El Dorado, Kansas, pursuant to 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, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; 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, which prohibit discrimination on the basis of disability by public entities. The College, as a recipient of Federal financial assistance and a public entity, is subject to the requirements of Section 504 and Title II.

The complainant alleged the College:

- 1) treated him differently on the basis of his disability (XXXXX XXXXX; XXXXX XXXXX XXXXX XXXXX (XXXXX)) when it removed him from the XXXXX XXXXX XXXXX course and prohibited him from taking any further courses in the XXXXX XXXXX program; and
- 2) treated him differently on the basis of sex (male) when it removed him from the XXXXX XXXXX XXXXX course and prohibited him from taking any further courses in the XXXXX XXXXX program for making comments regarding his relationships with women and his use of medication for hemorrhoids.¹

Before OCR completed its investigation, the College agreed to take the following actions to resolve allegation 1:²

NOTICE OF NONDISCRIMINATION

1. The College will revise its combined notice of nondiscrimination to ensure that it correctly: 1) identifies by name or title, address, and telephone number of the employee(s) responsible for coordinating the College's compliance efforts, particularly the employee(s) responsible for coordinating the College's compliance efforts under Section 504 and Title IX of the Education Amendments Act of 1972; and 2) provides the correct mailing address for the U. S. Department of Education, Region VII.³

¹ The Complainant states the College did not discipline female students who discussed inappropriate topics and touched other female students' breasts in the course and did not take action when the female instructor offered to administer suppositories to him, one of the few males in the course.

² OCR resolved allegation 2 in a letter dated December 8, 2014.

³ See <http://www2.ed.gov/about/offices/list/ocr/docs/nondis.html> for a sample notice of nondiscrimination that meets the minimum requirements of the regulations enforced by OCR.

REPORTING REQUIREMENT: By January 15, 2015, the College will provide to OCR a copy of its revised notice of nondiscrimination for review and approval.

Within 60 calendar days of receiving written notification from OCR that the revised notice of nondiscrimination is acceptable, the College will include the approved nondiscrimination statement on its website and in new and reprinted College publications, including catalogs, student handbooks, announcements, bulletins, and application forms, that it makes available to College students, employees, and applicants. The College will revise any publications that contain a notice of nondiscrimination so that they conform to the *Notice of Nondiscrimination* language as revised above and publish them in the College’s policy manual, handbooks and on the College’s website.

REPORTING REQUIREMENT: By (10 business days (two weeks) after notification of approval, the College will provide OCR documentation showing it has complied with item 1 of this Agreement.

STUDENT DISCIPLINE POLICIES AND PROCEDURES

2. The College will revise its student discipline policies and procedures to ensure they are consistent with those provisions of Section 504 with regard to individuals with disabilities who may pose a direct threat⁴ to the health or safety of others.⁵ At a minimum, the College’s revised discipline policies and procedures will include the following:
 - (a) a statement that in situations where the College views a student with a disability as a potential threat to others, and the risk of harm to others is not imminent (*i.e.*, not a situation the College deems to be an emergency), the College will make an individualized assessment of the threat the student poses to others and whether the student’s misconduct is related to the student’s disability before taking disciplinary action against the student;
 - (b) a statement that a determination by the College that a student with a disability poses a direct threat to the health or safety of others must be based on an individualized and objective assessment of the student and on reasonable

⁴Under Section 504, a person is not a qualified person with a disability if the person poses a direct threat to the health or safety of others that cannot be eliminated by modification of policies, practices, or procedures, or by the provision of auxiliary aids and services. *See School Board of Nassau v. Arline*, 480 U. S. 273, 287 (Section 504) and *cf.*, 56 Fed. Reg. 35694, 35701 (July 26, 1991) (Title II preamble, adopting the direct threat principles of Title III of the ADA); 28 C.F.R. § 36.208 (Title III regulation).

⁵The only statutory or regulatory authority for the use of the direct threat analysis in Section 504 concerns a direct threat to others. Although the concept of direct threat to self does exist in the employment context in Title I of the Americans with Disabilities Act, there is no statutory or regulatory basis to interpret the direct threat to self in employment cases as creating a direct threat to self in cases involving the receipt of education under Section 504.

judgment that relies on current medical knowledge or the best available objective evidence; and

- (c) a statement that the factors the College will consider in determining whether a student with a disability poses a direct threat to the health or safety of others include: the duration, nature and severity of the risk of harm to the health or safety of others; the probability that the potential injury will actually occur; and whether reasonable modifications of the College's policies, practices, or procedures, or the provision of auxiliary aids and services, will mitigate the risk.

In addition, the revised student discipline policies and procedures will identify which College offices, personnel, and/or committees will assess whether students with a disability pose a direct threat to the health or safety of others.

REPORTING REQUIREMENT: By February 15, 2015, the College will submit the revised student discipline procedures and policies for OCR's review and comment.

- 3. Within 60 calendar days of written notification from OCR that its revised student discipline policies and procedures are consistent with Section 504/Title II requirements, the College will adopt and implement the policies and procedures, publish the policies and procedures in its student handbook and post the policies and procedures on its website in a section accessible to students and College faculty and staff.

REPORTING REQUIREMENT: By 10 business days (two weeks) after receipt of comment, the College will provide OCR documentation showing it has complied with item 3 of this Agreement.

By June 1, 2015 (a date within 30 days of the end of the first semester of the 2014-15 academic year) and January 15, 2016 (a date within 30 days of the end of the second semester of the 2015-2016 academic year), the College will provide copies of all disciplinary or other actions against students in which the College conducted a direct threat analysis. The information will include, at a minimum, the student's conduct that resulted in the disciplinary action, the disciplinary sanction imposed on the student, the basis of the decision that the conduct was a direct threat to the health and safety of others, documentation of the direct threat determination made by the Direct Threat Committee, the names and titles of the individuals who participated on the committee, the information considered by the committee, copies of any documentation reviewed by the Direct Threat Committee, copies of notes or minutes from the Committee meetings, copies of any correspondence between the student and the Direct Threat Committee, and the basis for the Committee's determination.

If the student appeals an adverse decision by the Committee, copies of any correspondence between the student and College officials or representative regarding

the appeal, copies of all documents considered during the appeal, and a copy of the written decision in the appeal.

TRAINING OF COLLEGE STAFF

4. By March 15, 2015, the College will provide training regarding Section 504 and Title II to its Section 504 coordinator and all College administrators responsible for investigating disability discrimination complaints, direct threat issues, and/or who are responsible for investigating student misconduct and/or determining or imposing disciplinary action on students for misconduct. At a minimum, the training must address:
 - (a) Section 504's and Title II's prohibition against disability discrimination;
 - (b) how to conduct an individualized and objective assessment of the student to determine whether the student poses a direct threat to the safety or health of others; and
 - (c) the College's student discipline policies and procedures established as a result of item 2 of this Agreement.

REPORTING REQUIREMENT: By April 15, 2015, the College will provide OCR documentation showing it has provided the training session required by item 4 of this Agreement. The documentation must include:

- i. the date, time and location of the training;
- ii. the topics addressed at the training;
- iii. copies of handouts distributed to the training participants;
- iv. the name(s) title(s), and credentials of the individual(s) who conducted the training; and
- v. one or more sign-in sheets with the name and title of each employee who participated in the training.

INDIVIDUAL REMEDIES

5. By February 15, 2015, the College will convene a committee consisting of at least three administrators (Direct Threat Committee)⁶ to review the College's decision to

⁶This Direct Threat Committee is formed solely to review the College's disciplinary actions taken against the Complainant as described in the April 3, 2014, letter to the Complainant. The review will take place prior to the

1) prohibit the complainant from returning to the XXXXX XXXXX XXXXX in El Dorado, Kansas; 2) require the complainant to contact the College XXXXX every week either in person or via email; and 3) require the complainant to notify the College public safety department at least 15 minutes prior to his arrival to any College campus. The College will notify the complainant in writing that it has appointed a Committee to review the College's decision; the issue(s) the Committee will consider; the names of the Committee members; and the name and contact information of the person to whom the complainant may send information he wishes the Committee to consider as part of its review. The committee will determine if the complainant was disciplined for behavior related to a known or perceived disability that was viewed as a threat to the health or safety of others. If so, the committee will gather additional information about the complainant as needed and determine whether the complainant: a) currently poses; and b) posed at the time of the April 3, 2014, disciplinary action, a direct threat to the health and safety of others that cannot be eliminated by the modification of College policies, practices, or procedures, or by the provision of auxiliary aids and services. More specifically, the committee will make an individualized, objective direct threat assessment based on reasonable judgment and founded on current medical knowledge or the best available objective evidence to ascertain: the nature, duration, and severity of the risk posed by the complainant; the probability that potential harm to others will occur if he is permitted to return to the College; and whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services would mitigate the risk.

REPORTING REQUIREMENT: Within thirty days of the Direct Threat Committee reaching its determination, the College will provide to OCR documentation of the direct threat determination made by the Direct Threat Committee described in item 5 of the Agreement. The documentation will include a copy of the written notice provided to the complainant, the names and titles of the individuals who participated on the committee, the information considered by the committee, copies of any correspondence between the complainant and the Committee, copies of any documentation reviewed by the Direct Threat Committee, copies of notes or minutes from the Committee meetings, and the basis for the committee's determination.

If the complainant appeals an adverse decision by the Committee, copies of any correspondence between the complainant and College officials or representative regarding the appeal, copies of all documents considered during the appeal, and a copy of the written decision in the appeal.

6. If the Direct Threat Committee determines that the complainant was disciplined as described in item 5 of this Agreement for behavior related to a disability or perceived

disability and: a) was not a direct threat to the health or safety or others; or b) posed a direct threat that could be eliminated by the modification of policies, practices, or procedures or by the provision of auxiliary aids and services; the College will immediately offer to: 1) rescind the requirements to contact the College XXXXX each week and contact the College public safety department prior to coming to campus; and 2) lift the prohibition from returning to the XXXXX XXXXX XXXXX at the XXXXX XXXXX campus.⁷ The College will also issue the complainant a letter within 15 calendar days from the time the Direct Threat Committee makes its determination notifying him of these actions.

REPORTING REQUIREMENT: If applicable, within 30 calendar days of issuing the complainant the letter described in item 6 of this Agreement, the College will provide OCR a copy of the letter. The College may submit a copy of the certified mail documentation showing the time, date and location of delivery.

7. If the Direct Threat Committee determines that the complainant was not disciplined as described in Item 5 (the disciplinary actions in the College's April 3, 2014, letter to the Complainant) for behavior related to a disability or perceived disability, within 30 days of the determination, the College will issue the complainant a letter informing him of that determination and the basis for the disciplinary sanctions in the April 3, 2014, letter. The letter will also inform the Complainant whether the disciplinary actions in the April 3, 2014, letter are still in effect and if so, the rationale for the continuation. Additionally, the letter will also inform the complainant of his right to appeal the Direct Threat Committee's decision using the College's established procedures for student appeals of disciplinary actions. The College will grant the complainant a minimum of 45 calendar days from the time it issues the complainant the letter described in this paragraph to appeal his suspension and/or expulsion and will advise him how and to whom to file an appeal.

REPORTING REQUIREMENT: If applicable, within 30 calendar days of issuing the complainant the letter described in item 7 of this Agreement, the College will provide OCR a copy of the letter.

8. If the complainant requests accommodations based on a disability, the College will utilize its Office of Disability Services' Student Procedure Manual (Manual) to determine if the complainant is eligible for services based on a disability and what services are appropriate for the complainant to have an equal opportunity to participate in and gain the benefits of the College's education program and activities. The College will engage in an interactive process with the complainant to identify appropriate accommodations and will consider all of the complainant's accommodation requests. If the College determines the complainant is not eligible for services based upon a disability or if the complainant does not agree with the

⁷This Agreement does not affect or change the College's decision to remove the Complainant from the XXXXX XXXXX program.

academic adjustment or auxiliary aids the College will provide the College will refer the complainant to the appeal procedures in the Manual.

The College understands that OCR will not close the monitoring of this Agreement until OCR determines that the recipient has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104, and Title II, at 28 C.F.R. Part 35, 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. Part 104, and Title II, at 28 C.F.R. Part 35, 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.

/s/ Kimberly W. Krull

Dr. Kimberly Krull, President
Butler Community College

12/5/14
Date