

**RESOLUTION AGREEMENT**  
Ozarks Technical Community College  
OCR Docket Number 07152008

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 the above-referenced discrimination complaint against the College and to ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and the implementing regulations of these federal laws.

The College is resolving this complaint during OCR's investigation pursuant to Section 302 of OCR's *Case Processing Manual*. Therefore, OCR has not made any findings of fact or law, or issued a final determination with respect to this complaint. The College agrees to take the following actions, but nothing contained in this Agreement shall be construed to constitute an admission on the part of the College to any of the allegations in this complaint:

**NOTICE OF NONDISCRIMINATION**

- 1) The College shall revise the College's combined notice of nondiscrimination in accordance with Section 504, Title II, Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681; the Age Discrimination Act of 1975 (Age Act), 42 U.S.C. § 6101; Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and the implementing regulations of these federal laws. The College may consult with OCR for technical assistance in revising the notice of nondiscrimination, and may refer to OCR's policy guidance entitled *Notice of Non-Discrimination*, including the sample combined notice of nondiscrimination, and OCR's *Dear Colleague Letter* (April 4, 2011, page 6, pertaining to notices of nondiscrimination). The revised notice of nondiscrimination must include the name or title, address, telephone number (including any TTY or TDD number), and email address of the College employee(s) designated to coordinate efforts to comply with and carry out responsibilities under Title IX, Section 504, Title II, and the Age Act. The College will ensure that the College's notice of nondiscrimination is consistent in all publications, including the provision of consistent coordinator designations.

**REPORTING REQUIREMENT:** By **December 30, 2015**, the College will provide to OCR a draft, revised combined notice of nondiscrimination in accordance with this Agreement for OCR's review and approval.

- 2) The College shall prominently display a link to the OCR approved notice of nondiscrimination on the homepage and each section of the College's website. The online notice of nondiscrimination shall contain a link to the College's anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedures.

**REPORTING REQUIREMENT:** Within 30 calendar days following the College's receipt of OCR's approval of the revised combined online notice of nondiscrimination with embedded links, the College will provide an email to OCR with the links to the revised notice.

- 3) The College shall publish and prominently display the revised, OCR approved combined notice of nondiscrimination in an easily visible location, in student and employee hard-copy and online publications, including, but not limited to, the following publications: a) catalogs; b) student and employee application forms; c) board policies and grievance procedures for discrimination complaints; d) student, parent and faculty/staff/employee handbooks and student codes of conduct; and e) recruitment materials. For publications such as student, parent, and faculty/staff/employee handbooks, the notice should be placed at the beginning of each handbook in a section entitled *Notice of Nondiscrimination* or a similar title. The College also shall post the revised notice of nondiscrimination in the lobby of the Springfield Information Commons building.

**REPORTING REQUIREMENT:** Within 30 calendar days following the College's receipt of OCR's approval of the revised notice of nondiscrimination, the College will provide to OCR a current list of the hard-copy and online publications containing the revised notice of nondiscrimination, including copies of the hard-copy publications containing the revised notice. The College will ensure the revised notice will be inserted in the next regularly scheduled printed editions for 2016. By August 30, 2016, the College will provide OCR with a copy of those printed editions.

## **ANTI-DISCRIMINATION POLICIES AND GRIEVANCE PROCEDURE**

- 4) The College shall develop and implement anti-discrimination, anti-retaliation, and anti-harassment policies and a grievance procedure (or anti-discrimination policies and grievance procedure), to provide for the prompt and equitable investigation and resolution of discrimination complaints,<sup>1</sup> including the addition or revision of language to address the following:
  - a) A prompt, adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and provide evidence.
  - b) Written notice to the parties within a specified timeframe of the outcome or disposition of the grievance at each stage of the process (including the appeal).

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<sup>1</sup> OCR recommends a combined policy and grievance procedure for complaints of discrimination based on race, color, national origin, sex, disability, and age.

- c) Assurance that if discrimination has occurred, prompt and appropriate corrective and remedial actions will be taken.
  - d) The addition of an anti-retaliation provision in the College’s anti-discrimination policies and grievance procedure.
  - e) The incorporation of the applicable grievance procedure requirements set forth in OCR’s *Dear Colleague Letter* (April 4, 2011) and subsequent OCR guidance, including, but not limited to, the following
- 5) The College will ensure the revised anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedure are consistent in all publications.

REPORTING REQUIREMENTS FOR PARAGRAPHS 4 & 5: By  
**December 30, 2015**, the College will provide to OCR copies of its revised anti-discrimination, anti-harassment, and anti-retaliation policies and grievance procedure for OCR’s review and approval.

## **DIRECT THREAT ANALYSIS**

- 6) The College shall revise its policies and procedures, including student discipline policies and procedures (such as the *Standards of Student Conduct* and *Student Discipline & Grievance Procedures*) and behavior intervention procedures (including student support services procedures), to ensure they are consistent with the Title II direct threat regulatory provisions regarding individuals with disabilities who may pose 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.<sup>2</sup> At a minimum, the College’s policies and procedures will include the following direct threat language and standard:
- a) the direct threat policy and procedure is applicable in situations where the College proposes to take adverse action against a student whose conduct is considered to pose a significant risk to the health or safety of others;
  - b) written notice, subject to paragraph 6(f), to the individual who is the subject of the direct threat inquiry, including an invitation to provide documents or other information relating to the direct threat inquiry. The written notice will include a copy of the College’s direct threat policy and procedure and the name and contact information of the office or staff member the individual can contact regarding the inquiry. The written notice will also include a statement that if the student fails to

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<sup>2</sup> See 28 C.F.R. § 35.104.

- provide a response, the direct threat inquiry will proceed with the documents or other information the College has available.
- c) identification of the appropriate offices, individuals, and committee(s) responsible for making the determination whether a student with a disability poses a direct threat to the health or safety of others;
  - d) a requirement that a student will not be subjected to adverse action on the basis of unfounded fear, prejudice and stereotypes;
  - e) a requirement that when determining whether an individual poses a direct threat to the health or safety of others, the College must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain:
    - a. the nature, duration, and severity of the risk,
    - b. the probability that the potential injury will actually occur, and
    - c. whether any reasonable modifications of the College’s policies, practices, or procedures, or the provision of auxiliary aids or services, will mitigate the risk;
  - f) a statement that in exceptional circumstances, such as situations where safety is of immediate concern, the College may take interim steps pending a final decision regarding adverse action against a student on the basis of direct threat as long as minimal due process is provided in the interim and due process is offered later; and
  - g) a written notice to students of applicable appeal procedures in cases resulting in an interim suspension or other adverse action.
- 7) The College will ensure that the current direct threat regulatory definitions and standard are inserted in the policies and procedures utilized by the Behavioral Intervention Team (BIT) when determining whether a student poses a direct threat to the health or safety of others. In addition, the College will develop an electronic and hard-copy form that captures individualized information and responses to each factor contained in the direct threat regulatory standard (set forth in the previous subparagraph) and provides an area on the form to record a recommendation or decision by the BIT team about whether the student poses a direct threat to the health or safety of others. The direct threat form and supporting documentation will be maintained in the BIT electronic and hard-copy files, at a minimum.

- 8) The College will revise its policies and procedures to ensure that if a student who is considered a direct threat to the health or safety of others by the College appeals a disciplinary action, the applicable College official and/or the Student Grievance Committee (SGC) will receive and consider the direct threat form (described in paragraph 7) and any attachments reflecting the direct threat analysis and recommendation or decision by the BIT and approving College official as part of the deliberation process for the appeal.
- 9) The College will revise its policies and procedures to ensure that College employees, staff, or officials who participate in the BIT process or approval process for disciplinary action against a student do not participate in the deliberations or decision for the appeal process of that disciplinary action, including the SGC appeal process.

REPORTING REQUIREMENTS FOR PARAGRAPHS 6-9: By  
**December 30, 2015**, the College will submit its revised policies, procedures, and forms reflecting the direct threat standard to OCR for its review and comment.

### **COMMUNICATION OF REVISED POLICIES AND PROCEDURES**

- 10) The College shall communicate its revised policies, procedures, and forms required by this Agreement to all College employees and officials by:
  - a) Disseminating those revised policies and procedures via the College's electronic communications (email) system.
  - b) Including those revised policies and procedures in the College's online and hard-copy Student Handbook and Catalog. Hard-copy publications containing the revised policies and procedures shall be distributed with the next regularly scheduled printed editions.

REPORTING REQUIREMENT: Within 30 calendar days following the College's receipt of OCR's approval of all of the College's revised policies and procedures described in this Agreement, the College will provide to OCR a copy of the College's email message and attachments distributing the revised policies and procedures via the College's email system, and links to the policies and procedures on the College's website.

### **INDIVIDUAL RELIEF**

- 11) **Within three weeks after this Agreement** is signed, the College will cancel the Pell grant for the X---clause redacted---X, return the Pell grant funds to the federal Pell

grant program, and use institutional funds or other institutional means to ensure the Complainant's account balance with the College is zero (0.00) X---remainder of sentence redacted---X.<sup>3</sup>

**REPORTING REQUIREMENT:** Within one month after this Agreement is signed, the College will send a letter to the Complainant, via certified mail, return receipt requested, with a copy of the documentation confirming the College returned the Pell grant funds to the federal Pell grant program, and provide an explanation in the letter that by returning those Pell grant funds, his lifetime Pell grant amount will not be affected. The College will copy the applicable OCR staff person on the letter and email the letter to the applicable OCR staff member on the date the letter is sent to the Complainant.

- 12) **Within three weeks after this Agreement** is signed, the College will expunge any and all discipline records reflecting the Complainant's suspension from the Complainant's educational files at the College.
- 13) Within 15 calendar days following the College's receipt of OCR's approval of the required policy revisions pertaining to direct threat in this Agreement, the College will send a letter to the Complainant, via certified mail, return receipt requested, and copied to the applicable OCR staff member, stating that the Complainant may request in writing to reapply and/or have the College remove any restriction on the Complainant's access to the College campuses, including the College's facilities or activities.
  - a) The College's letter to the Complainant in the paragraph above, shall state that, upon receipt of the Complainant's written request for reapplication and/or to seek removal of any restrictions, the College may apply a direct threat analysis to the Complainant using the direct threat standard required by this Agreement and pursuant to the College's revised policies and procedures. The College's letter to the Complainant will include a copy of the applicable policy and procedures and offer him an opportunity to submit information to assist the College in making its direct threat determination.
  - b) The College will send a letter to the Complainant, via certified mail, return receipt requested, and copied to the applicable OCR staff member, which includes language indicating: 1) his XXXXX has been expunged from his educational

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<sup>3</sup> If the XXXX award year is closed, the College will contact the COD (1-800-474-7268) and request to reopen the award year for the purpose of returning the Pell grant funds. The College will return the Pell grant funds even if the Complainant's courses were 60% or more completed at the time the College withdrew the Complainant from those courses.

record at the College; and 2) The College’s decision regarding his reapplication and any restrictions on his access to the College campuses, if applicable.

**REPORTING REQUIREMENT:** If the Complainant requests to be allowed access to the College in response to the letter sent to him, the College will provide documentation to OCR of its consideration of his request, the names and titles of the individuals who participated in the response to the Complainant, and a copy of the letter sent to the complainant advising him of the College’s response to his request. If the College initiates a direct threat analysis based on the Complainant’s request to access or be readmitted to the College, the College will provide documentation of its direct threat analysis to OCR, including, but not limited to, the factual basis for the College’s belief that the Complainant poses a direct threat to the health or safety of others, copies of all correspondence between the College and the Complainant, the names and titles of the individuals who conducted the direct threat analysis, the information received and considered in making the direct threat determination, the dates of any meetings and who participated in the meetings, the College’s findings and conclusions, and a copy of the written notice to the Complainant of the College’s decision, including the Complainant’s appeal rights.

- 14) If the Complainant seeks readmission to the College, the College will waive any reapplication costs or fees (excluding tuition, books, lab fees, etc.), associated with readmission.

**REPORTING REQUIREMENT:** If the Complainant seeks readmission to the College, the College will email the applicable OCR staff member confirming the College waives costs and fees associated with readmission.

## **TRAINING**

- 15) The College will provide training on the subject of Section 504 and Title II compliance, including a proper direct threat analysis, and the College’s anti-discrimination, anti-harassment, and anti-retaliation policies and procedures, to College employees and officials, including the designated compliance coordinators and investigator(s). The training will be conducted by an individual(s) knowledgeable about the laws and issues pertaining to Section 504 and Title II compliance and the specific topics listed below. The training will include:
- a) A discussion and distribution to trainees of the current direct threat standard and the College’s revised policies and procedures reflecting that direct threat standard. In addition, members of the BIT and SGC teams, the Dean of Students, and the

Associate Vice Chancellor for Student Affairs will receive at least four hours of training by an outside expert on conducting an effective direct threat analysis using the Title II direct threat standard, including a detailed presentation about how to 1) investigate incidents that appear involve a direct threat, 2) conduct an individualized assessment, 3) obtain current medical and objective information, 4) and analyze each factor in the direct threat standard, including considering reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services that will mitigate the risk.

- b) The identification of the College’s Section 504 and Title II coordinator, including required contact information, and an explanation of the responsibilities of the coordinator(s).
- c) A discussion of the general anti-discrimination provisions of Section 504 and Title II, including the prohibition against denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service of the College.<sup>4</sup>
- d) A discussion and distribution to trainees of the College’s revised notice of nondiscrimination, and anti-discrimination, anti-harassment, and anti-retaliation policies and procedures, including the College’s grievance procedure for complaints of discrimination and how to file a complaint of discrimination.
- e) An explanation of what constitutes retaliation and specific examples of retaliation.

**REPORTING REQUIREMENT:** Within 60 calendar days following the College’s receipt of OCR’s approval of the required policy revisions in this Agreement, the College will provide training in accordance with the requirements of this Agreement. Within 14 calendar days following the required training, the College will provide to OCR documentation showing it has completed the training. The documentation must identify the:

- a) Date, time, and location of the training.
- b) Topics addressed at the training (the College may provide OCR an outline of the training and copy of the materials disseminated at the training).
- c) Name(s), title(s), and credentials of the individual(s) who conducted the training.

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<sup>4</sup> See, 28 C.F.R. § 35.130(b)(1)(i), (ii) and (vii) (Title II) and 34 C.F.R. § 104.4(b)(1)(i), (ii) and (vii) (Section 504).

- d) Name, title, and work location of each employee who attended the training (a sign-in sheet with the attendees' names, signatures, titles, and work locations is sufficient).
- 16) 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 and Title II, which were at issue in this case.
- 17) 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 regulations implementing Section 504 and Title II, which were at issue in this case.
- 18) 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 60 (sixty) calendar days to cure the alleged breach.

The person(s) signing for the College represents that he is authorized to bind the College and to this Agreement.

For the College:

/s/ Hal L. Higdon  
Dr. Hal L. Higdon, Chancellor  
Ozarks Technical Community College

12/18/15  
Date