

## RESOLUTION AGREEMENT

The Junior College District of Metropolitan Kansas City, Missouri  
OCR Docket Number 07152278

The Junior College District of Metropolitan Kansas City, Missouri (College), 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 voluntarily 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:

### REASONABLE MODIFICATION ANALYSIS

- 1) The College shall include in its Section 504 and Title II, or anti-discrimination, policies and procedures the following language pertaining to a reasonable modification analysis:<sup>1</sup>  
*The College shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program, or activity.*

**REPORTING REQUIREMENT:** By **May 30, 2016**, the College will submit its revised policies and procedures reflecting the reasonable modification standard to OCR for its review and pre-approval. OCR understands that the College has in place a shared governance approval procedure which may require a longer period for final adoption and implementation of such revised policies and procedures.

### DIRECT THREAT ANALYSIS

- 2) The College shall revise its policies and procedures, including student discipline policies and procedures (such as the *Code of Student Conduct*) and behavior intervention procedures including the draft Behavior Intervention Team (BIT) 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 analysis:

---

<sup>1</sup> See 28 C.F.R. § 35.130(b)(7).

<sup>2</sup> See 28 C.F.R. §§ 35.104 and 35.139.

- 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 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 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/or committee (such as BIT) 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:
    - i. The nature, duration, and severity of the risk.
    - ii. The probability that the potential injury will actually occur.
    - iii. 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.
  - g. A written notice to students of applicable appeal procedures in cases resulting in an interim suspension or other adverse action.
- 3) The College will ensure that the current direct threat regulatory definitions and standard are inserted in the policies and procedures utilized by the 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 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.

- 4) The College will 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 applicable committee will receive and consider the direct threat form (described above) 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.
- 5) The College will revise its policies and procedures to ensure that College employees, staff, or officials who participate in the BIT process or discipline process and decision-making for a student do not participate in the deliberations or decision for the appeal process of that disciplinary action.

**REPORTING REQUIREMENTS FOR PARAGRAPHS 2-5:** By **May 30, 2016**, the College will submit its revised policies, procedures, and forms reflecting the direct threat standard and analysis to OCR for its review and pre-approval. OCR understands that the College has in place a shared governance approval procedure which may require a longer period for final adoption and implementation of such revised policies and procedures.

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

- 6) 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 i) a copy of the College's email message and attachments distributing the revised policies and procedures via the College's email system, ii) the links to the policies and procedures on the College's website, and iii) a copy of the revised printed policies and procedures that are published

or distributed after the next regularly scheduled printed editions. OCR understands that the College has in place a shared governance approval procedure which may require a longer period for final adoption, implementation and distribution of such revised policies and procedures as described in this Agreement. OCR agrees that the College may from time to time request from OCR and be granted an additional reasonable amount of time for distribution of the revised policies and procedures described in this agreement, as the College in good faith believes reasonably necessary to allow the shared governance approval procedure to take place and the revised policies and procedures to be approved.

## **INDIVIDUAL RELIEF**

7) X---paragraph redacted---X

**REPORTING REQUIREMENT:** X---paragraph redacted---X

8) X---paragraph redacted---X.

**REPORTING REQUIREMENT:** X---paragraph redacted---X

## **TRAINING**

9) The College will provide training on the subject of Section 504 and Title II compliance, including reasonable modification and direct threat analyses, 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 general anti-discrimination provisions of Section 504 and Title II, and the College's revised policies and procedures reflecting the reasonable modification standard. The training will include 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>3</sup> and the requirement to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the College can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.<sup>4</sup>
- b. A discussion and distribution to trainees of the direct threat standard and required analysis, and the College's revised policies and procedures reflecting the direct

---

<sup>3</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).

<sup>4</sup> See 28 C.F.R. § 35.130(b)(7).

threat standard. The training will include how to 1) investigate incidents that appear to 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.

- c. 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).
- 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. A step-by-step review and explanation of the College's grievance procedure for handling complaints of discrimination, harassment, and retaliation, including, but not limited to, the following areas:
  - i. An explanation that complaints can be made verbally or in writing to a College staff member or official.
  - ii. The responsibility of College staff to immediately refer verbal or written complaints of discrimination, harassment, or retaliation to the College's applicable compliance coordinator.
  - iii. The College's responsibility to promptly and thoroughly investigate all complaints of discrimination, including harassment and retaliation, in accordance with the District's revised policies and procedures.
  - iv. Identification of the individuals who are responsible for investigating complaints of discrimination.
  - v. A detailed discussion of the College's specific investigative steps, timeframes, preponderance of the evidence standard, and investigative reports and findings.
  - vi. The College's obligation to take timely, effective action to address discrimination, harassment, and retaliation, and to prevent its recurrence.
  - vii. An explanation that the College will not restrict a complainant's or student's ability to communication with potential witnesses or to provide evidence to support a complaint of discrimination.

**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. OCR understands that the College has in place a shared governance approval procedure which may require a longer period for final adoption, implementation and distribution of such revised policies and procedures as described in this Agreement. OCR agrees that the College may from time to time request from OCR and be granted an additional reasonable amount of time for distribution of the revised policies and procedures described in this agreement, as the College in good faith believes reasonably necessary to allow the shared governance approval procedure to take place and the revised policies and procedures to be approved.

Within 14 calendar days following the required training, the College will provide to OCR documentation showing it has completed the training. The documentation must include the following information:

- (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.
- (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).

10) 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.

11) 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 and that all actions taken to comply with the requirements of the Agreement are subject to OCR’s review and approval. 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.

12) 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/ Mark James  
Dr. Mark James, Chancellor  
The Junior College District of Metropolitan Kansas  
City, Missouri

4/4/16  
Date