



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VII  
KANSAS  
MISSOURI  
NEBRASKA  
OKLAHOMA  
SOUTH DAKOTA

May 11, 2018

*Sent via email only to XXXXX*

XXXXX X. XXXXX, Partner  
XXXXX, XXXXX, XXXXX, XXXXX, & XXXXX, LLP  
XXXXX XXXXX XXXXX XXXXX  
XXXXX, XXXXX XXXXX

Re: Presentation College  
OCR Case Number: 07-17-2073

Dear XX. XXXXX:

On January 26, 2017, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint against your client, the Presentation College (College), Aberdeen, South Dakota. This letter is to confirm your client has voluntarily submitted a Resolution Agreement (Agreement) to resolve Allegation 1 of this complaint. For the reasons set out below, Allegation 2 is being dismissed.

Specifically, the Complainant alleged that the College treated her differently on the basis of disability by: 1) requiring her to withdraw from College in August 2016, based on concerns related to her mental health in violation of 34 Code of Federal Regulations (C.F.R.) §104.43; and 2) denied her the ability to reside in on-campus housing for the 2017-18 academic year in violation of 34 C.F.R. §104.43.

OCR is responsible for enforcing 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance.

Additional information about the civil rights statutes OCR enforces is available at <http://www.ed.gov/ocr>.

To protect individuals' privacy, the names of employees, witnesses, and other parties were not used in this letter.

### **Allegation 1**

The Complainant alleged that the College discriminated against her on the basis of disability by requiring her to withdraw from College in August 2016 based on concerns related to her mental health in violation of 34 C.F.R. §104.43

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a college to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Under 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. Under Section 504, the “direct threat” standard applies to situations where a college proposes to take adverse action against a student whose disability poses a significant risk to the health or safety of others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In determining whether a student poses a direct threat, the college must make an individualized assessment, based on a reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk. OCR recognizes that the application of the “direct threat” standard may be modified in exception circumstances, such as situations where safety is of immediate concern. Under this analysis, it must be determined:

- Whether there was an individualized assessment of the Complainant’s conduct, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the nature, duration, and severity of risk, the probability that the potential injury will actually occur; and
- Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.

Following a proper determination of direct threat, an educational institution may take appropriate action, up to and including dismissal, against a student with a disability who poses a direct threat to the health and safety of others and it may require as precondition to a student’s return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g. followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional).

## **Background and Voluntary Resolution**

The Complainant attended the College during the 2015-16 school year. As a member of the College's Women's soccer team, the Complainant was required to be on campus for training at the beginning of August 2016, prior to the commencement of classes.

The Complainant informed OCR that she attempted suicide on August 11, 2016, and was taken to the hospital. That night the College's Vice President of Student Affairs contacted the Complainant's mother in England and told her that the Complainant would not be allowed to return to campus. The Complainant stayed in the hospital two nights until her mother arrived at the hospital and she was released. On or about August 15, 2016, the Complainant withdrew from the College, stating she did so because the Vice President of Student Affairs told her and her mother that she would not be allowed to return to campus housing due to concerns for her safety and the safety of others. Without a place to stay on campus, she stated she had to return home to England.

The Complainant stated she was diagnosed with depression in January 2017, after she returned to England and provided medical documentation regarding her diagnosis to the College.<sup>1</sup>

The College asserted that it was the Complainant and her family who determined it was in the Complainant's best interest to withdraw from the College and return home to England. The College provided a copy of the Complainant's withdraw form signed by her on August 15, 2016. The reason for the withdrawal is not stated on the form.

Under Section 302 of OCR's Case Processing Manual procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a voluntary resolution agreement.<sup>2</sup> The provisions of the agreement must be aligned with the complaint allegations and the issues investigated and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations. Consistent with OCR's procedures, the College requested to resolve the issues in this complaint through a voluntary resolution agreement, which was executed on May 10, 2018. Accordingly, OCR is concluding its investigation of Allegation 1 of this complaint. A copy of the signed Agreement is enclosed. OCR will monitor the College's implementation of the Agreement.

## **Allegation 2**

The Complainant alleged that the College treated her differently on the basis of disability by denying her the ability to reside in on-campus housing for the 2017-18 academic year in violation of 34 C.F.R. §104.43.

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<sup>1</sup> As is discussed in Allegation 2, the Complainant applied for readmission in December 2016-January 2017 and was accepted for the 2017-18 school year. On April 21, 2016, in anticipation of attending the College during the 2017-18 school year, the Complainant filled out the College's "Application for Accommodations." On this form, the Complainant indicated that she had a psychological/psychiatric disorder and requested an emotional support animal. The Campus Counselor provided written medical documentation that the Complainant has anxiety and panic attacks.

<sup>2</sup> OCR's *Case Processing Manual* may be accessed at <https://www2.ed.gov/about/offices/list/ocr/docs/ocrspm.pdf>.

## **Legal Standards**

The Section 504 regulation at 34 C.F.R. § 104.43 prohibits discrimination at the postsecondary level on the basis of disability, including different treatment. OCR uses a different treatment analysis to determine whether there is a *prima facie* case of discrimination on the basis of disability. To establish a *prima facie* case of discrimination on the basis of disability, OCR determines whether the facts are sufficient to establish: 1) the disability of the student against whom the recipient allegedly discriminated; 2) the student was qualified for a particular benefit provided by the recipient; 3) a recipient official, acting in his or her capacity as an employee of the recipient, treated the student less favorably than a similarly situated student who does not have a disability in a way that interfered with or limited the student's ability to participate in school. If a *prima facie* case of discrimination on the basis of disability is established, OCR then determines whether the recipient can articulate a legitimate, non-discriminatory reason for the different treatment. If so, OCR assesses whether the recipient's legitimate non-discriminatory reason for the different treatment is merely a pretext for unlawful discrimination.

## **Findings of Fact**

In December 2016, the Complainant reapplied for admission to the College for the Fall 2017 semester. At or near this same time, the Complainant expressed her concerns to the College's International Admissions Counselor that she would be ineligible for her scholarships if she did not live on campus. In an email dated January 17, 2017, the Internationals Admissions Counselor requested that the Vice President of Admissions clarify whether the College would honor the Complainant's scholarships if the Student Affairs Office required her to live off campus. The Vice President of Admissions replied on January 27, 2017, the Complainant would receive her scholarships even if she lived off campus.

On February 17, 2017, the College informed the Complainant she was accepted for admission to the College for the 2017-18 academic year. While readmitted, the Complainant told OCR that the Vice President of Student Affairs initially told her and her mother that she would not be able to live in the campus dormitory because of concerns for the safety and well-being of other students. The Complainant stated she provided the College with medical documentation indicating her fitness to return to school.

In early August 2017, the College informed OCR it would allow the Complainant to live in the dorms for the 2017-18 academic year and confirmed that the Complainant would receive the same scholarships she had received during the 2016-17 academic year. The Complainant subsequently confirmed to OCR that she had received and rejected the College's offer. She stated that she felt the Vice President of Student Affairs would "make it uncomfortable for her" if she returned so she declined the offer and stated she did not intend to return to the College.

## **Legal Analysis and Conclusion**

Under *CPM* Section 108(i) OCR will dismiss an allegation if OCR obtains credible information indicating that the allegations raised by the complainant are currently resolved or are no longer appropriate for investigation. According to the Complainant and her mother, the Vice President

of Student Affairs initially refused to allow the Complainant to live on campus citing the well-being of the other students assigned to the Complainant's suite. Specifically, because of the Complainant's prior attempted suicide, the Vice President of Student Affairs remained concerned with the Complainant's mental health despite the medical documentation provided by the Complainant's treating physician. Although offered just before the start of the 2017-18 school year, the College informed the Complainant it would allow her to reside in the on campus dormitory. The Complainant declined the offer and does not intend to return to the College. Based on these facts, OCR determined that the allegation raised by the Complainant is no longer appropriate for investigation. The College offered the Complainant the opportunity to live on campus during the 2017-18 school year, and the Complainant has indicated she does not intend to return to the College. OCR considers the individual allegation of the complaint resolved. Additionally, any remaining concerns related to the manner in which the College handled the situation, will be addressed through the Agreement secured with respect to Allegation 1 of the complaint. Therefore, pursuant to the *CPM*, OCR is dismissing Allegation 2 of the complaint effective the date of this letter.

This 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. The Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation. Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

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 personal privacy.

If you have any questions regarding this letter, you may contact XXXXX XXXXX, Equal Opportunity Specialist, at (816) 268-XXXX (voice) or (877) 521-2172 (telecommunications device for the deaf), or by email at XXXXX.XXXXX.ed.gov

Sincerely,

/s/ Kelli Douglas

Kelli Douglas  
Supervisory Attorney

Enclosure