

Resolution Agreement
Presentation College
OCR Case Number: 07-17-2073

The U.S. Department of Education, Office for Civil Rights (OCR), conducted a complaint investigation of the Presentation College, Aberdeen, South Dakota, 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. The College, as a recipient of Federal financial assistance and is subject to the requirements of Section 504. Prior to the completion of OCR's investigation, the College agreed to resolve Allegation 1 pursuant to Section 302 of OCR's *Case Processing Manual*. The Resolution Agreement does not constitute an admission of liability, non-compliance, or wrong-doing by the College. Accordingly, to resolve Allegation 1 of the complaint, the College agrees to take the following actions.

POLICIES AND PROCEDURES

1. The College will develop a policy to ensure consistency with those provisions of Section 504 with regard to individuals with disabilities who may pose a direct threat¹ to the health or safety of others.² At a minimum, the College's 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 or a safety concern 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/safety concern the student poses to others and whether the student's behavior is related to the student's disability before taking 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 judgment that relies on current medical knowledge or the best available objective evidence; and
 - (c) a statement of 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 including: the duration, nature and severity of the risk of harm to the health or safety of others; the

¹Under 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 Americans with Disabilities Act); 28 C.F.R. § 36.208 (Title III regulation).

² The 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.

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 College will identify the College individuals qualified to potentially serve as members of the College's Direct Threat Committee, whose members will be responsible for assessing whether students with a disability pose a direct threat to the health or safety of others.

REPORTING REQUIREMENT: By September 28, 2018, the College will submit the revised student procedures and policies for OCR's review and approval and will provide OCR with the names, titles and qualifications of the potential members of its Direct Threat Committee.

2. Within 60 calendar days of written notification from OCR that its revised student policies and procedures are consistent with Section 504 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 December 28, 2018, the College will provide OCR documentation showing it has complied with item 2 of this Agreement.

TRAINING OF COLLEGE STAFF

3. By the end of January 2019, the College will provide training regarding Section 504 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 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 revised student discipline policies and procedures established as a result of item 1 of this Agreement.

REPORTING REQUIREMENT: By February 1, 2018, the College will provide OCR documentation showing it has provided the training session required by item 3 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.

The College understands that by signing this Agreement, it agrees to provide the foregoing 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 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. Upon completion of the obligations under this Agreement, OCR shall close the complaint.

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 sixty (60) calendar days to cure the alleged breach.

/s/ Margaret A. Huber
Dr. Margaret A. Huber, President
Presentation College

5/10/18
Date