

RESOLUTION AGREEMENT
Hartnell Community College District
OCR Docket Number 09-17-2578

In order to resolve the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) against Hartnell Community College District (District) pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, as amended (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, the District agrees to take the actions in this Resolution Agreement.

I. COMPLAINT AND GRIEVANCE PROCEDURES

- A. By July 31, 2018, the District will revise Administrative Procedure (AP) 3435 or draft a new grievance procedure pursuant to the requirements of Section 504 and Title II as follows:
1. The grievance procedure will provide for notice to the parties of the outcome of the complaint; and
 2. The draft will make any other conforming revisions necessary to make clear that it is the applicable procedure for complaints of unlawful discrimination under Federal law, including Section 504 and Title II, and not only complaints of sex discrimination, including sexual harassment, pursuant to Title IX of the Education Amendments Act of 1972.
 3. *Reporting requirement:* By July 31, 2018, the District will submit a draft complying with Section I.A. above to OCR for its review. OCR will provide written approval to the District.
- B. By July 31, 2018, the District will revise Board Policy (BP) and Administrative Procedure (AP) 5530 to include the following:
1. BP/AP 5530 will not be applied to complaints of discrimination on the basis of sex, race, color, ancestry, ethnic group, religion, national origin, sexual orientation, or disability;
 2. The District will add to BP/AP 5530 a statement that complaints alleging unlawful discrimination or harassment will not be processed through this BP/AP and that they will be referred for processing under AP 3435.
 3. The District will make any other necessary conforming revisions to establish that BP/AP 5530 should not be applied for complaints alleging complaints of unlawful harassment or discrimination under Federal law, including Section 504 and Title II.
 4. *Reporting requirement:* By July 31, 2018, the District will submit a draft complying with Section I.B. above to OCR for its review. OCR will provide written approval to the District.
- C. Within 60 calendar days of OCR's review and approval of the complaint and grievance procedures referenced in Sections I.A. and I.B. of this Agreement, the District will adopt and implement the approved/revised complaint and grievance procedures.
1. *Reporting requirement:* The District will notify OCR of its adoption of the revised complaint and grievance procedures by sending a copy of the adopted procedures within 10 calendar days of their adoption.

- D. Within 30 calendar days of the District's adoption of the procedures, the District will provide to OCR for its review and approval a draft memorandum addressed to administrators and staff in Student Affairs, Human Resources and Equal Employment Opportunity, Allied Health, and Disabled Students Programs and Services which summarizes the changes and describes the BP/AP applicable to student complaints of unlawful discrimination under Federal law, including Section 504 and Title II. OCR will provide written approval of the memorandum.
1. *Reporting requirement:* The District will distribute the memorandum within 10 calendar days of OCR's written approval of the memorandum, and will provide to OCR evidence sufficient to show that the memorandum has been distributed to the addressees cited in I.D. above.

II. POLICY AND PROCEDURE REGARDING NURSING STUDENTS WITH DISABILITIES

- A. The District will develop policy and procedure applicable to the District's Nursing Program that provide for the following:
1. The policy and procedure will make clear that a psychiatric disability or "emotional illness" (as described in Policy #8 of the Nursing and Allied Health Policy and Procedure Manual) may be a disability as defined under Section 504 and Title II. In this regard, the Section 504 regulations, at 34 C.F.R. § 104.3(j)(1), and the Title II regulations, at 28 C.F.R. § 35.108(a)(1), define an individual with a disability as one who has (1) a mental or physical impairment that substantially limits one or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment.
 2. The District will establish a procedure to review the decision of a faculty of record to remove a nursing student from a class, lab, or clinical setting due to behavior of the nursing student which the faculty of record believes threatens or violates the physical, biological, or emotional safety of the client, family, students, faculty, staff or self. The review procedure will provide for a prompt meeting of appropriate staff members, who will review the incident at issue with reference to relevant resources including Policy #8, the Student Handbook, the Policy and Procedure Manual, and guidance from the State Board of Registered Nursing, and determine whether the behavior at issue met the definition of unsafe described in these resources.
 - i. The review procedure will include guidance on when a Program Improvement Plan (PIP) will be developed to address and remediate any remaining concerns about the nursing student's behavior or the perception by others of his or her behavior.
 - ii. The review procedure will include a dismissal process and an appeal process for the decision of the appropriate staff members. These may be new processes, or incorporate existing procedures for dismissal, appeal, and complaints of unlawful discrimination.
 3. A nursing student who is removed from a class, lab, or clinical setting will be specifically notified whether or not to return to his/her classes, labs, or clinical settings at the next scheduled sessions. If the nursing student is directed not to return pending completion of the nursing program's review, the nursing program will not count the nursing student as absent or tardy, and will provide an alternative assignment for the nursing student in the interim.
 4. *Reporting requirements:* By July 31, 2018, 2018, the District will provide to OCR for its review and approval draft policy and procedure as described in Section II.A of this Agreement. OCR will notify the District of its approval in writing.

5. Within 60 calendar days of OCR's review and approval of the draft policy and procedure as described in Section II.A of this Agreement, the District will adopt and implement the policy and procedure.
 - i. *Reporting requirement:* The District will notify OCR of its adoption of the policy and procedure by sending a copy to OCR within 10 calendar days of their adoption.
- B. The District will revise its Student Handbook and Policy and Procedure Manual to ensure consistency regarding the policy and procedure described in Section II.A of this Agreement.
 - i. *Reporting requirement:* Within 60 days of the District's adoption of the policy and procedure described in Section II.A of this Agreement, the District will provide to OCR for its review and approval those sections of the Student Handbook and Policy and Procedure Manual which have been revised pursuant to Section II.B of this Agreement. OCR will provide its approval to the District in writing, and the District will adopt and implement the revisions within 30 calendar days of OCR's approval.
- C. Within 30 calendar days of the District's adoption of the policy and procedure, the District will provide a draft memorandum addressed to all nursing program faculty which summarizes the policy and procedure described in Section II.A of this Agreement to OCR for its review and approval. OCR will provide its approval to the District in writing.
 - i. *Reporting requirement:* The District will distribute the memorandum within 10 calendar days of OCR's written approval, and will provide to OCR evidence sufficient to show that the memo has been distributed to the addressees cited in Section II.C above.

III. TRAINING

- A. The District will work with OCR to schedule training on its campus by OCR for administrators and staff whose responsibilities include reviewing and responding to grievances alleging discrimination on the basis of disability in the nursing program, including relevant administrators and staff in the Office of Student Affairs, Human Resources and Equal Employment Opportunity, and Allied Health, regarding the application of Section 504 and Title II to the post-secondary setting, including the requirements for grievance procedures and investigations of complaints alleging unlawful disability discrimination.
 1. *Reporting requirement:* The District will provide to OCR a copy of a sign-in sheet identifying the staff members and their titles after the training is completed.

IV. INDIVIDUAL REMEDY

- A. The District will refund to the Complainant in OCR case number 09-17-2578: (1) fifty percent of the total tuition paid by the Complainant for the spring 2017 semester; (2) fifty percent of the total student fees paid by the Complainant for the spring 2017 semester; and (3) the cost incurred in applying to other nursing programs (fees, transcripts, postage, background check) subsequent to the Complainant's dismissal from the District's Nursing Program, up to a total of \$800.00. The District will not refund any costs absent verifiable documentation submitted by the Complainant.
 1. *Reporting requirements:* By July 31, 2018, 2018, the District will provide to OCR for its review and approval a draft letter to the Complainant notifying him that he is being contacted pursuant to this Agreement, and cite to Section IV.A of this Agreement. The letter will also state what documentation is required by the District in order to process the refunds and costs, a date by which such documentation must be submitted to the District, and to whom such documentation shall be submitted.

- i. Within 10 calendar days of OCR's approval of the letter described in Section IV.A.1, the District will send the letter to the Complainant via certified mail, notify OCR that it has done so, and provide to OCR proof of delivery via certified mail.
- ii. By August 31, 2018, the District will provide to OCR documentation showing what costs were refunded or paid to the Complainant pursuant to this Agreement.

V. GENERAL PROVISIONS

- A. The District 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 the Agreement. Further the District understands that during the monitoring of the Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement. Upon the District's satisfaction of the commitments made under the Agreement, OCR will close the case.
- B. The District 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. Sections 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

_____/s/_____
Willard Lewallen
Superintendent/President
Hartnell Community College District

_____July 10, 2018_____
Date