

April 23, 2014

Lee Ann Rabe, Esq.  
Senior Assistant Attorney General  
Ohio Attorney General  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Re: OCR Docket #15-13-2209

Dear Ms. Rabe:

This letter is to notify you of the disposition of the complaint filed against Cincinnati State Technical and Community College (the College), alleging that the College discriminated against a student (the Student) on the basis of disability during the xxxx spring and summer terms. Specifically, the complaint alleged that the College failed to provide the Student approved academic adjustments and auxiliary aids and services and that the College did not appropriately respond to a xxxx xx xxxxx complaint the Student filed with the XXXX XXXXXXXXXXXX, XXXXXXXXXXXXX XXX XXXXXXXXXXXX XXXXXXXXXXXXX XXXXX XXXXXXXXXXXX about this issue.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits discrimination based on disability by recipients of federal financial assistance from the U.S. Department of Education. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. The College is a public institution that receives Federal financial assistance from the U.S. Department of Education. It is, therefore, subject to the requirements of Section 504 and Title II, and OCR had jurisdiction to investigate this complaint.

Based on the allegations, OCR investigated the following legal issues:

- whether the College excluded a student from participation in, denied him the benefits of, or otherwise subjected him to discrimination in its programs and activities based on his disabilities in violation of the regulation implementing Section 504 at 34 C.F.R. §§ 104.4 and 104.43, and the regulation implementing Title II at 28 C.F.R. § 35.130;
- whether the College failed 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 in violation of Section 504's implementing regulation at 34 C.F.R. § 104.44(a); and
- whether the College failed to appropriately respond to a complaint regarding disability discrimination, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.7 and the regulation implementing Title II at 28 C.F.R. § 35.107.

To investigate this complaint, OCR interviewed the Student and reviewed documentation submitted by the Student and the College. OCR also interviewed pertinent College witnesses. In addition, OCR provided the Student with the opportunity to respond to information submitted by the College and to provide additional support for the complaint allegations.

Based on a careful consideration of the information obtained, OCR has determined that the evidence is not sufficient to support a finding that the District violated Section 504 or Title II as alleged. However, our review of the College's Section 504 policies and procedures found that the policies and procedures did not comply with Section 504. The College has entered into a resolution agreement to resolve these issues. We discuss below the bases for our determination.

### **Background**

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- **Allegation Regarding Academic Adjustments**

The College's procedures provide that a student with a disability who requires accommodations must register with ODS by presenting documentation supporting the request. The procedures provide that, after receiving the required documentation, the ODS Director will meet with the student to determine appropriate accommodations. Once the appropriate accommodations are identified, ODS provides the student with a verification letter for student accommodations, which lists the student's approved accommodations and which the student is to present to his professors. The procedures provide that registered Students must obtain a new letter each semester for that semester's courses. As noted above, the Student indicated that he was familiar with these requirements.

### **Spring Semester xxxx**

The complaint alleged that the College did not provide the Student appropriate accommodations for the xxxx spring semester although he repeatedly attempted to secure them by visiting the ODS. As noted earlier, the xxxx spring semester ran from xxxxxxxx xx xxxxx xxxxxxxx xxxxx xxx xxxx.

The Student advised that he had visited the ODS office in an attempt to secure appropriate accommodations on xxxxxxxx xx xxxxx and was advised by ODS staff to return to ODS after the semester began. The Student said he went to ODS again on xxxxxxxx x xxx xxx xxxxx and that ODS staff told him that he needed to provide additional documentation to support his request. The Student did not report any other contacts with ODS before the conclusion of the xxxx spring semester for the purposes of obtaining accommodations for that semester.

The College stated that the Student did not request accommodations for the xxxx spring semester. The ODS "sign in" logs do not record the Student visiting the ODS for any purpose between xxxxxxxx xx xxxxx and xxxxxxxx xxx xxx. Although the logs record seven students visiting ODS on xxxxxxxx xxxxxxxx and 21 students visiting ODS on xxxxxxxx xxxxxxxx they do not record a visit by the student. ODS was closed on xxxxxxxx xxx xxx, as it was a Saturday.

The College said that an ODS staff member reported that the Student may have stopped by ODS sometime in xxxxxxxx xxxxx ODS staff explained that the Student would occasionally stop by during his periods of enrollment to socialize with ODS staff.

### **Summer Semester xxxx**

The complaint also alleged that the College did not provide the Student appropriate accommodations for the xxxx summer semester although he repeatedly attempted to secure them by visiting the ODS. As noted earlier, the xxxx summer semester ran from xxx x xxxxxxxx xxxxxxx xxx xxxxx

The Student advised OCR that he went to ODS on xxxxx xxxxxxxxx to request academic adjustment letters for the xxxx summer semester. He said that the ODS staff member he spoke with told him to return to ODS on the first day of classes. He said that he returned to ODS on xxx xxx xxxxx He said that he again spoke with an ODS staff member and that this time he was told to submit additional documentation to support his request. He said that the ODS staff member also scheduled him to meet with the ODS director on xxx xxx xxxxx

X---PARAGRAPH REDACTED---X

The Student did not report to OCR any other visits to ODS to request accommodations for the xxxx summer semester after the xxx xx appointment. However, in correspondence to the College, the Student reported that he had also visited the ODS on xxxxx x xxx xxx xxxxx xxx xxxxx xx xxxxx

The ODS logs do not record the Student requesting services from ODS on xxxxx xxx xxxxx as reported by the Student. ODS logs first record the Student visiting ODS on xxx xx xxxxx for the purpose of scheduling an appointment. The College advised OCR that the Student scheduled an appointment on that day to meet with the ODS director on xxxxxxx xxx xxx xxx as reported by the Student. The ODS director said that the Student did not show up for the scheduled xxx xx appointment. The director said that as result, he telephoned the Student later that day and left him a voicemail message asking the Student to contact him. He said that the Student never responded to his message. OCR reviewed two xxxxxxx xxxxx emails between the ODS director and another College administrator regarding the meeting. The other College administrator had written the ODS director that the Student had complained that he had gone to ODS twice but had not received any assistance. The ODS director responded that the Student did not show up for his scheduled appointment that morning and that he would follow-up with the Student.

Regarding the June and July dates the Student reported to the College that he had gone to the ODS, OCR found that ODS was closed on both xxxxx x xxx xxxxx xx as those dates fell on weekends and that the ODS sign in logs do not record the Student visiting ODS on xxxxxxx

The Director advised OCR that he had never met or spoken with the Student prior to processing the Student's xxxxxxxxxxx xxxxx request for accommodations for the upcoming xxxx fall semester. Both the College and Student provided documentation to OCR indicating that the Student was provided a verification letter for student accommodations by the ODS director, dated xxxxxxx xx xxxxx applicable to that semester.

After obtaining the above information, OCR asked the Student if he had any additional information regarding his attempts to secure academic adjustments during the xxxx spring and summer semesters. He did not provide any additional relevant information.

- **Allegation Regarding Disability Complaint**

The complaint alleged that the College did not appropriately respond to a xxxx xx xxxxx complaint that the Student filed alleging discrimination based on disability. Specifically, the complaint alleged that the Student filed a complaint with the College's XXXX XXXXXXXXXXXX and the College had not attempted to speak with him or resolve the matters.

In response to this allegation, the College reported to OCR that it had never received a xxxx xx xxxxx complaint or letter from the Student. OCR thereupon asked the Student to provide OCR a copy of his xxxx x complaint. The Student provided OCR a letter dated xxxxxxxxxxxx which was addressed to the College's XXXX XXXXXXXXXXXX XX XXXXXXXX XXXXXXXXXXXX. In the letter, the Student thanked the XXXX XXXXXXXXXXXX for previously meeting with him to discuss his grievances and his request for a withdrawal from the xxxx summer semester. In the letter, the Student specifically raised concerns about the physical accessibility of restrooms and his difficulties accessing accommodations for the xxxx summer semester. He also reiterated his desire to withdraw from the xxxx summer term courses in which he was enrolled.

After receiving the xxxx x letter from the Student, OCR asked the College if it had received a copy of the letter. The College stated that it had no record of ever having received the letter. The XXXX XXXXXXXXXXXX XX XXXXXXXX XXXXXXXXXXXX, to whom the letter was addressed, advised that she had never received the letter from the Student and that she first met the Student on xxxxxx xxx xxxxx well over a month after the date of the letter purporting to thank her for meeting with him.

OCR notes that the College did receive letters from the Student dated xxxxxx xxxxxx xx xxxxxx xxx xxx xxxxxxxxxxxx xx xxxxx In the letters, the Student made several disability-related allegations. In response, the XXXX XXXXXXXXXXXX met with the Student on at least five occasions, gathered information and documentation from College faculty and staff, and sent the Student a letter dated xxxxxxxxxxxx xxx xxxxx stating, in pertinent part, that she had determined that the College had not been unwilling to provide accommodations to the Student, as alleged.

- **Disability Policies and Procedures**

During the investigation, OCR also examined the College's disability grievance procedures and its policies and procedures regarding the provision of academic adjustments and auxiliary aids and services for students with disabilities.

The College's disability grievance procedures were available online at <http://www.cincinnatiastate.edu/about-cs/non-discrimination-policy/?searchterm=504>. They stated that any student could file a grievance alleging that the College or its staff, instructors, and/or administrators have inadequately applied Section 504, Title IX, or Title VI. The procedure encouraged individuals to pursue an informal solution with the division dean or assistant dean, whenever possible. They said that if an informal

resolution could not be obtained, the student should file a formal written complaint with the Dean of Enrollment and Student Development within ten school days from the date of the incident. They said that the Dean's decision could be appealed to the College's Title VI/Title IX/Section 504 Coordinator within five school days from the date of the Dean's decision. They said that the Coordinator's decision could be appealed to the College's Executive Vice President within five school days from the date of the Coordinator's decision. Finally, they said that the College's final decision could be appealed by the complainant to the U.S. Department of Education, Office for Civil Rights. The name, title, and contact information for the Section 504 Coordinator was provided within the grievance procedures.

The College's disability accommodation procedures are published in a brochure issued by the ODS. The brochure states that students with disabilities who need reasonable accommodations must register with the ODS and present appropriate documentation. The brochure states that the ODS will consider any information when evaluating requests for accommodations, including medical documentation and a description of needs.

## **Applicable Regulatory and Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit a recipient or public entity from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others. In addition, the Section 504 regulation provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are 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. Title II requires that public entities to make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7).

The Section 504 regulation provides, at 34 C.F.R. § 104.44(d)(1), that a recipient shall take such steps as are necessary to ensure that no person with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

Institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The student must inform the school that he has a disability and needs an academic adjustment. Postsecondary schools may require students with disabilities to follow reasonable procedures to request an academic adjustment. Students are responsible for knowing and following those procedures. Schools may set reasonable standards for documentation. Schools may require students to provide documentation prepared by an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician. The documentation should provide enough information for the student and the school to decide what is an appropriate academic adjustment. If the documentation that the student provides does not meet the postsecondary school's requirements, a school official should tell the student in a timely manner what additional documentation the student needs to provide.

If an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

Under both Section 504 and Title II, recipients are not required to make modifications that would fundamentally alter the nature of the service, program or activity. While a university must accommodate course or other academic requirements to the needs of an individual student with a disability, academic requirements that can be demonstrated by the institution to be essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory and need not be changed. 34 C.F.R. § 104.44(a); 28 C.F.R. § 130(b)(7). With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give great deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. While it reasonably might be expected that a course instructor would be included in the process of determining what requirements are essential to participation, allowing an individual professor to have ultimate decision-making authority or to unilaterally deny an accommodation is not in keeping with the diligent, well-reasoned collaborative process that warrants the accordance of deference by OCR to the judgments of academic institutions. The decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful and rational review of the academic program and its requirements.

A person with a disability is "qualified" with respect to postsecondary education services if the person meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity. 34 C.F.R. § 104.3(1)(3).

The Section 504 regulation, at 34 C.F.R. § 104.7(b), states, in part, that a recipient shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by Section 504. The Title II regulation contains a similar requirement at 28 C.F.R. § 35.107(b). When evaluating whether a recipient's grievance procedures meet the prompt and equitable standard, OCR considers a number of factors, including whether the procedures provide for:

- (1) notice of the procedures, including where complaints may be filed;
- (2) application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- (3) adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- (4) designated and reasonably prompt timeframes for the major stages of the complaint process;

- (5) notice to the parties of the outcome of the complaint; and
- (6) an assurance that the school will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

A grievance procedure cannot be prompt or equitable unless students know it exists, how it works, and how to file a complaint. The school must make sure that all designated employees have adequate training as to what conduct constitutes disability discrimination and are able to explain how the grievance procedure operates.

Grievance procedures may include informal mechanisms for resolving disability discrimination complaints to be used if the parties agree to do so. In addition, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In some cases, mediation will not be appropriate even on a voluntary basis.

Although not required under Section 504, many institutions provide an opportunity to appeal the findings or remedies in a grievance. In such cases, OCR evaluates the grievance process, inclusive of the appeal level, to determine whether, as a whole, the process is both prompt and equitable. Finally, OCR recommends, and many institutions include, a provision advising that retaliation against any individual who files a complaint or participates in the grievance process is prohibited.

### **Analyses and Conclusions**

Regarding the allegation that the College failed to provide the Student appropriate accommodations during the xxxx spring and summer semesters, it is undisputed that the College recognizes the Student as a qualified individual with a disability. However, although the Student identified several dates on which he said that he requested accommodations from the ODS and was either told to return at a later date or to return with additional documentation, OCR was unable to confirm that the Student had made requests to the ODS on those dates. In several instances, the ODS was closed on dates identified by the Student while in other instances neither the ODS log nor ODS staff corroborate the Student's allegation. Finally, in the singular instance in which OCR is able to conclude that the Student contacted ODS regarding accommodations for the xxxx summer semester, the evidence shows that, contrary to the Student's assertion that the College canceled the appointment, the Student failed to keep the appointment. Based on the foregoing, OCR finds that the evidence is insufficient to conclude that the College failed to provide the Student accommodations for the xxxx spring and summer semesters, in violation of the Title II and Section 504 regulations, as alleged.

Regarding the allegation that the College failed to respond appropriately to the Student's xxxxxxxxxxxx disability complaint letter, OCR found that although the Student provided OCR a letter dated xxxxxxxxxxxx addressed to the College's XXXXXXXX XXXX XXXXXXXXXX, which contained several disability related concerns, there is no evidence indicating that the letter was ever sent to, or received by, the College. Accordingly, OCR

finds that the evidence is insufficient to support a finding that the College failed to respond appropriately to the letter, as alleged, in violation of Section 504 and Title II.

Regarding the College's disability grievance procedures, OCR has determined that they do not ensure the provision of a prompt and equitable resolution process as required by the Section 504 and Title II regulations at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b). Specifically, the policies do not apply to anyone except students; apply to complaints alleging discrimination carried out by other students, or third parties; provide for an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination; mention harassment; provide for the adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; have designated and reasonably prompt timeframes for the major stages of the complaint process; provide for written notice to the parties of the outcome of the complaint; and provide an assurance that the school will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

Regarding the College's accommodations procedures, OCR has determined that they do not fully comport with the requirements of the Section 504 and Title II regulations in that they, for instance, inappropriately reference that academic adjustments and auxiliary aides and services must be reasonable.

### **Resolution**

The resolution agreement requires the College to revise its Section 504/Title II accommodation policies and procedures and its Section 504/Title II grievance procedure to ensure that they fully comply with Section 504 and Title II, to adopt the revised policies and procedures, to provide notice of the revised policies and procedures, and to provide training on its revised policies and procedures to relevant College staff.

This concludes OCR's investigation of the complaint and should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in 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.

Please be advised that the College 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.

The complainant may have the right to file a private suit in Federal court, whether or not OCR finds a violation.

We appreciate your efforts and those of College staff as we investigated and resolved this complaint. We look forward to receiving the College's first monitoring report by June 6, 2014. The report should be directed to xxx xxxxxxxx xxxxxxxx attorney, who can be reached at xxxxxxxxxxxxxx Monitoring reports submitted by e-mail should be submitted to [OCRCleMonitoringReports@ed.gov](mailto:OCRCleMonitoringReports@ed.gov).

If you have any questions about this letter or OCR's resolution of this case, please contact me at xxxxxxxxxxxxxx

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure