



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV  
MICHIGAN  
OHIO

November 24, 2015

Janice L. Sterling, Esq.  
Starr, Butler, Alexopoulos & Stoner, PLLC  
20700 Civil Center Drive, Suite 290  
Southfield, Michigan 48076

Re: OCR Docket #15-15-2017

Dear Ms. Sterling:

This letter is to notify you of the disposition of the above-referenced complaint that was filed against Kellogg Community College (the College) on October 3, 2014, with the U.S. Department of Education's Office for Civil Rights (OCR) customer service team, and which was forwarded to OCR's Cleveland Regional Office on November 3, 2014. The complaint alleged that the College discriminated against a student (the Student) with a disability (xxxxxx impairment) during the second half of the 2014 summer session. Specifically, the complaint alleged that, during the second half of the 2014 summer session, the College failed to provide the Student with academic adjustments, including the appropriate auxiliary aids and services to accommodate his xxxxxx impairment, such as a xxxxxx for tests and xxxxxxxx on how to use xxxxxx xxxxxxxx xxxxxxxxx in his xx xxxxxxxx and xxxxx xxxxxxx classes.

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), which prohibit discrimination on the basis of disability by recipients of Federal financial assistance, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance and as a public entity, the College is subject to Section 504 and Title II. Therefore, OCR had jurisdiction to investigate this complaint.

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

- Whether the College took such steps necessary to ensure that a qualified student with a disability was not excluded from participation in the College's program because of the absence of auxiliary aids as required by the regulation implementing Section 504 at 34 C.F.R. § 104.44(d).

- Whether the College failed to take appropriate steps to ensure that its communications with students with disabilities are as effective as its communications with others, in violation of the regulation implementing Title II at 28 C.F.R. § 35.160(a).

## **Background**

The College is a public institution with a number of locations in Southwest Michigan. The College offers several programs, including pre-professional college/university transfer curricula, occupational associate degree programs, certificate programs aimed at job preparation, related training for apprenticeships, and workforce development services. On an annual basis, the College serves approximately 14,500 students through its online and in-seat programs.

[x---paragraph redacted ---x]

## **Summary of OCR’s Investigation**

During the course of the investigation, OCR interviewed the Student and reviewed documentation and information submitted by the College. OCR also interviewed the College’s director of support services who is responsible for ensuring the College’s compliance with Section 504; an adjunct instructor for the College’s American Foundations history course (the American Foundations instructor); and an adjunct instructor for the College’s Learning Strategies course (the Learning Strategies instructor), which were the two specific courses at issue in this complaint.

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

[x--- paragraph redacted---x]

OCR obtained information about the College’s disability services from its website. The College has a Support Services Department (hereinafter referred to as Support Services) that provides College-wide services like tutoring and counseling to all students. Support Services also has a disability services office. Support Services is different from The Bridge, with different contact information and different staff, although The Bridge also provides College-wide services including tutoring. The College indicated to OCR that it was Support Services that had worked with the Student to provide him disability services while he was enrolled at the College.

According to the College’s disability services web page, the first step in the process for registering with Support Services as a student with a disability is to complete an “Intake Form” and submit medical documentation. The “Intake Form,” which is listed as a requirement on the website, asks students to provide personal information that appears to be designed to record whether they fall under any Federally defined “special populations” categories such as for grant and support program purposes, including whether they are low income, have a disability, or are a single parent with a minor child. The “Intake Form” does not ask students any questions about

their disability, what classes they are registered for, or what accommodations they are seeking. Students are also required to provide current medical documentation of their disability from a licensed professional. The website states that the medical documentation must include a clearly stated diagnosis, the methods or tests used for diagnosis, specific recommendations for accommodations in a higher education environment, and the date of the information provided. Information that is older than five years will not be accepted by the College.

The second step of the process states that Support Services will evaluate a student's documentation and notify the student if additional documentation is required to determine whether the student qualifies for disability services. The third step states that Support Services will notify the student which "reasonable accommodations" they are eligible to receive and will notify the student's instructors of the approved accommodations. The fourth step states that, at the beginning of each semester during which the student is enrolled at the College, Support Services will automatically notify the student's instructors of the student's approved accommodations. The website also states that it is the student's responsibility each semester to speak with their instructors about their disability and to contact Support Services to ask for their accommodations in a specific class. This process, as outlined on the website, does not include a requirement that Support Services meet with the student nor does it require any discussion with the student regarding their specific needs as an individual with a disability.

The College's website states that alternative format textbooks are available to students with disabilities, but students will be responsible for the purchase of the book like other students in the course. It states that students will not be required to pay for academic adjustments necessary for their disabilities. However, it goes on to say that, "occasionally," Support Services helps students purchase assistive equipment or "set up accommodations individually, at their cost, through a third-party service provider." The website does not address alternative format course materials other than textbooks.

Although OCR's investigation is limited to whether the Student received appropriate accommodations during the summer 2014 semester, OCR looked at the process originally used by the College to approve the Student's accommodations as relevant background information. OCR determined that it was necessary because the information provided by the College was unclear as to what accommodations the Student was approved to receive in 2014.

OCR reviewed documentation provided by the College showing that the Student was registered with the College's disability office as a student with a disability. Specifically, the documentation established that the Student submitted medical documentation to Support Services in the spring of xxxx. The medical documentation did not include any specific recommendations or requests by the professional for accommodations for the Student, as is required by the policy posted on the College's website. In a letter dated xxx xx xxxx the director of support services informed the Student that he was eligible for one accommodation. It stated: "Student may request a xxxxxx for all tests and quizzes. Requests must be made prior to test date with Support Services." In another, unsigned and undated document, electronically generated by the College, it appears that an addition was made to the Student's approved accommodations. The electronic note stated, "Student may request from Support Service[s], immediately upon registering, xxxxxxxxxx of all text books. Student is still responsible for the purchase of books as well as

equipment needed to access the xxxxxxxxxxx texts.” No record was provided to OCR with respect to explaining when or why this accommodation was added for the Student or for how long it was in effect. Similarly, no record was provided to OCR showing that anyone in Support Services met with the Student to discuss his need for xxxxxxxxxxx xxxxx course materials or whether he could use xxxxxxxxxxx xxxxxx textbooks.

OCR also reviewed documentation submitted by the College showing that Support Services had facilitated an order for xxxxxx course books for the Student’s spring xxxxx courses. The College did not provide documentation showing that Support Services reviewed the required course materials for the Student’s summer 2014 classes or that xxxxx books were requested or provided for that time period. OCR noted that the College’s form entitled “Request for xxxxx Accommodations” states that requests for xxxxx must be submitted a month prior to the start of the semester. There is no documentation showing that the Student was approved, or even considered eligible, for xxxxxxxxxxx xxxxxx course materials other than textbooks, a xxxxxxxx or xxxxxxxx for classroom assignments, permission to tape record lectures, or the provision of a note-taker or lecture notes from instructors.

OCR interviewed the director of support services, who confirmed that the College’s process for registering as a student with a disability is posted on the College’s website. She stated, however, that the “Intake Form” is optional and that she tells students they are not required to fill it out when registering as a student with a disability. She said there is a form posted on the College’s website that students are required to have completed by their doctors. She said that she is responsible for receiving and reviewing all medical documentation submitted by students in support of their requests for academic adjustments. She confirmed that the College does not approve any accommodations for students with disabilities unless the accommodations are specifically requested in the required medical documentation that must be completed by a licensed medical professional.

The director of support services said that she is the only individual in Support Services who is responsible for processing student requests for academic adjustments and auxiliary aids and services. She said that she is the ultimate decision-maker on questions of whether to approve a request and what accommodations are approved for each student. She said she makes these decisions based on the medical documentation provided and conversations with the student. She said that if a student’s accommodations are not working, she will engage in an interactive process with the student to determine whether the student might need some additional services. She said the student is then required to go back to the medical professional to obtain further documentation that specifically requests those accommodations. She also said she would require a student to request additional medical documentation if the doctor failed to reveal the actual diagnosis of the student. She said she does not evaluate a student’s needs based on the specific classes they are taking, but rather, generates a general list of accommodations that can be used in all of the student’s classes. Once a student is approved for the accommodations, the student is not required to return to Support Services unless the student needs to go there to access their accommodations.

The director of support services stated that she approved the Student’s request for accommodations based on the medical documentation he provided. She did not know when the

xxxxx accommodation was added to the Student's list of approved accommodations but said that the change would have been approved based on additional medical documentation that the Student provided. She acknowledged that the Student's disability file, provided to OCR, did not include any specific requests for accommodations from a medical professional. She said she was not able to recall what information she relied on in determining the Student's approved accommodations and she could not recall when and how his accommodations were amended. She stated that sometimes a student's disability makes it obvious to her what the student needs, and in those situations she will require less information from the student to determine the approved accommodations. She gave the example of a visibly obese student requesting a special chair that is detached from a desk. She said she believes she may have taken that approach with the Student.

The director of support services said that typical accommodations and services for students with xxxxxx xxxxxxxxxxxx include a xxxxxx for tests and access to a tape recorder. She said that in some circumstances a xxxxxx could be provided to a student with a xxxxxx xxxxxxxxxxxx in order to assist in their participation with in-class assignments. She said, however, in those cases, the xxxxxx would be provided only for a finite period and the instructor or student would have to request it for a specific classroom activity. In most cases, a student who needs a xxxxxx for an in-class assignment would need to complete the assignment in Support Services at a later time. She stated that there is one Support Services employee who is generally available to provide such assistance to students. She said she will on occasion provide xxxxxxxxxxxx or xxxxxx services to students when that employee is out on leave or otherwise unavailable to students, and some others in the office will step in as well.

[x--- paragraph redacted ---x]

[x--- paragraph redacted ---x]

The director of support services confirmed that the College does not provide students with any assistance in learning how to use xxxxxx xxxxxxxx on their personal computers and will provide only very limited assistance in learning how to use xxxxxx xxxxxxxx on the College's computers.

The director of support services confirmed that the Student frequently visited the Support Services office to seek assistance with his day-to-day class participation. Support Services provided him with tutoring, xxxxxxxx and other assistance such as xxxxxxxxxxxx, at times when someone was available. As noted above, there is one individual in Support Services who is primarily responsible for providing such support to students.

[x--- paragraph redacted ---x]

OCR reviewed the course syllabi for the two courses the Student was enrolled in during the summer 2014 term and interviewed the Student's instructors for those courses.

With respect to the Student's American Foundations course, the syllabus states that the course met twice a week on Tuesdays and Thursdays. The students in the course were evaluated based on their scores on two exams (a midterm and a final exam comprised of identification questions

and essay responses based on primary sources and secondary sources); seven sets of chapter questions (related to the chapter reading for Thursdays, due every Tuesday and discussed in class); four quizzes (two take-home and two in-class quizzes comprised of multiple choice, true or false, matching, fill-in-the-blank, chronologies, and short answer questions); one final project (a writing based on a relevant primary source); two classroom activities (independent or group activities with an oral report to the class); and two primary source responses (1-2 pages of written analysis of a primary source course materials provided for class discussion). Students did not receive points or lose points for attendance, but missed classwork or quizzes could not be made up without an excused absence. The primary source packet for this class was provided to OCR as a hardcopy printout.

The American Foundations instructor described the course as mostly lecture-based with a few classroom activities. She said the Student's class was different from her typical classes because it was a smaller group and followed an expedited summer schedule, only meeting approximately 9 to 12 times during the course of the summer. She said that the primary source packet for the class assignments was posted on the class's online course management page. She said that none of the assignments for the course required the students to conduct research but then said that the students were required to obtain information for their final project from the library's website. The instructor said she gave all of the course materials, exams, quizzes, and other assignments to the Student's "tutor" in Support Services so that she could help him complete the work. She said that she permitted the Student to take his quizzes "open book," but she does not know whether he used any materials. The instructor could not recall if the Student took notes in her class. She said that the Student did not come to her class often, but when he was in attendance, since his tutor was not always available, he would end up spending his time in her classroom listening to lectures. She said she believed that the Student's accommodations in her class consisted of a xxxxxx for tests and assignments, xxxxxxxx xxxx xx tests, and an xxxxx book.

[x--- paragraph redacted ---x]

The grade sheets provided by the College were redacted with respect to the names of the other students in the class.

With respect to the Student's Learning Strategies course, the syllabus states that this class met on Mondays and Wednesdays. The stated purpose of the course is to help students learn to be successful in college and in life. The class consisted of guided journal entries, completed at home, which involved reading course materials and writing responsive journal entries. In-class activities consisted of group and individual activities. Students could earn up to 225 points toward their final grade for full participation in classroom activities. Another component of the class was reading activities. Each week, students were assigned reading and corresponding journal entries. Grades for the Learning Strategies course consisted of points for class participation, 12 journal entries, a student "IDEAS inventory," a career report, an academic course plan, and either two reflection pieces or an essay. The College submitted to OCR a day-to-day outline of classroom activities in the Student's Learning Strategies course showing that, on most days, students were expected to engage in class discussion as well as writing exercises. For example, on the first day, the students participated in an "icebreaker" discussion, wrote a sample journal entry, took notes from the book reading, and completed a self-assessment; on the

third day, students practiced writing on the essay topic of their choice; on the seventh day, students discussed a story, created a job description for the job they most wanted, and took notes on page 103 of the book; on the tenth day, students were expected to do a case study on page 182 of the book and discuss chapter 6 of the book; and on the thirteenth day, the students watched a video, discussed the video content, and worked on an essay assignment.

OCR interviewed the instructor for the Student's Learning Strategies course. He stated that the class is discussion-based and that the discussions are led by him. He has the students read a short chapter in class and then, as a class, they talk about the information in that chapter. In addition to learning strategies, they discuss life strategies and what students are thinking about doing with their lives. The Learning Strategies instructor explained that during the semester at issue in this complaint only eight students, including the Student, were enrolled in the course. The instructor typically delivered short lectures that lasted about 5-10 minutes and then the students participated in class activities and discussed how to apply the information to their lives. Students generally did not take notes of his lectures. He said he never saw the Student take notes during class. The instructor said that the Student did not have any in-class assistance to help him participate in the class. The instructor said that students in his class were graded based on writings that they completed in the classroom and outside of the classroom. He said the in-class writings were very informal, and the out-of-class writings were only slightly more formal. The instructor said that he provided writing prompts in his course for the writings students completed during class. He said that if prompts were written on the board, they were also read aloud to the students.

[x--- paragraph redacted ---x]

[x--- paragraph redacted ---x]

The instructor said no one from Support Services consulted him regarding his course's requirements for the purpose of determining what accommodations were appropriate for the Student. He said he received the letter indicating the Student's approved accommodations, but he could not recall all of the Student's accommodations. He said the Student was given assistance with tests and quizzes. The Learning Strategies instructor confirmed that none of the Student's accommodations applied to the requirements of his course. He said that students typically had plenty of time to do their assignments for his class, and some of the assignments that were given during class included extra time following the class period. The instructor explained that four of the Student's assignments were turned in a month after their due dates. He stated that some of the assignments were typed and others were handwritten, and he assumed that Support Services staff was writing the Student's answers.

The Learning Strategies instructor said that he believed the Student had an e-textbook and that it was kept in Support Services. When OCR staff asked the instructor what the Student did during class while other students were completing their in-class written assignments and reading course materials, he said that the Student sat quietly at his desk. He said he would ask the Student if he needed help, and the Student always told him that he did not. He said he believed the Student needed additional assistance but he was not sure whether this was due to the Student's xxxxxx

impairment or something else. The witness explained that when the Student was given a prompt to do something, it did not seem like the Student was responding to it.

[x--- paragraph redacted ---x]

OCR provided the Student with an opportunity to respond to the information provided by the College. The Student told OCR that when no one was available to provide assistance with his end-of-semester Learning Strategies assignments he turned to resources outside of the College. The Student explained that he ran into similar problems, however, in which no one was available to assist him with his coursework. The Student also told OCR that he once turned to his cousin for assistance with an American Foundations assignment, and his cousin was unable to help because they did not have access to the materials necessary to complete the assignment.

The Student also told OCR that he was given a tape recorder, but he did not use it in either of his classes because there was no point at which he was given formal permission by the instructors to use the tape recorder.

### **Applicable Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4(a), provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The regulation implementing Section 504 provides, at 34 C.F.R. §§ 104.4(b)(1)(ii), (iii), and (vii), that a recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing or other arrangements, on the basis of disability, afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded to others, provide a qualified person with a disability with an aid, benefit, or service that is not as effective as that provided to others, or otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. For purposes of this part of the Section 504 regulation, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for persons with and without disabilities, but must afford persons with disabilities equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs. 34 C.F.R. § 104.4(b)(2).

The regulation implementing Section 504, at 34 C.F.R. § 104.44, requires recipients to make 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. The regulation implementing Section 504 further states, at 34 C.F.R. §§ 104.44(d)(1) and (2), that recipients must take such steps as are necessary to ensure that no student 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. Auxiliary aids may include taped texts, interpreters, or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual

impairments, and other similar services and actions. However, recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

No aid or service will be useful unless it is successful in equalizing the opportunity for a particular student with a disability to participate in the education program or activity. Not all students with a similar disability benefit equally from an identical auxiliary aid or service. The institution must analyze the appropriateness of an aid or service in its specific context. For example, the type of assistance needed in a classroom by a student who is hearing-impaired may vary, depending upon whether the format is a large lecture hall or a seminar.

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.

A postsecondary school may require a student to follow reasonable procedures to request an academic adjustment. Institutions may set their own requirements for documentation so long as they are reasonable and comply with Section 504 and Title II. A student must provide documentation, upon request, that he or she has a disability, that is, an impairment that substantially limits a major life activity and that supports the need for an academic adjustment. The documentation should identify how a student's ability to function is limited as a result of her or his disability. The primary purpose of the documentation is to establish a disability in order to help the institution work interactively with the student to identify appropriate services. The focus should be on whether the information adequately documents the existence of a current disability and need for an academic adjustment.

For OCR to find that the College discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services pursuant to 34 C.F.R. §104.44, the evidence must demonstrate that: (1) the student is a qualified individual with a physical or mental impairment that substantially limits one or more major life activities; (2) the student notified the recipient of his/her disability and need for academic adjustments, including auxiliary aids; (3) there is an academic adjustment or auxiliary aid that, if provided, would allow the student to participate in the recipient's educational program; and (4) the recipient failed to provide appropriate and effective academic adjustments or auxiliary aids.

The regulation implementing Title II, at 28 C.F.R. § 35.130, has nondiscrimination and integration requirements similar to those in the regulation implementing Section 504. Additionally, the regulation implementing Title II has specific requirements for communication, which, in pertinent part, require that a public entity take appropriate steps to ensure that

communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1). Public entities are required to furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, programs, activities, and services of those public entities. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual with a disability; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In determining what types of auxiliary aids and services are necessary, public entities are required to give primary consideration to the requests of the individual with a disability. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.

### **Analysis**

The evidence supports, and it is undisputed, that the Student is a qualified individual with a physical impairment that substantially limits one or more major life activities, as he is xxxxxxxx xxxx, and that he notified the College of his need for academic adjustments and auxiliary aids and services when he submitted his medical documentation to Support Services in or around xxxx. The evidence shows that in xxxx the College approved the Student as a student with a disability and provided one accommodation to him: a xxxxxxx for tests and quizzes. The evidence further shows that at some point during the Student's enrollment Support Services added the accommodation of xxxxx books and notified the Student in writing that he needed to purchase his own laptop and software in order to access the course materials being provided to him. The information provided by the College did not establish when this accommodation was added, why it was added, or what information was considered in adding the accommodation. There is evidence, however, that Support Services did not take into account the fact that the Student did not have a computer and did not know how to use xxxxxxxxxxxx xx xxxxxxx software when it approved this accommodation for him, or otherwise how or whether this would be effective for him.

OCR concludes that there is sufficient evidence to support that in the summer 2014 the College failed to provide appropriate and effective academic adjustments or auxiliary aids to the Student as alleged. OCR further finds that the Student was excluded from participating in his summer 2014 classes because of the College's failure and the absence of educational auxiliary aids and accessible format course materials. OCR also finds that the College failed to take appropriate steps to ensure that communications with the Student were as effective as communications with other students. The evidence supports that the Student was unable to access the educational opportunities offered by the College with substantially equivalent ease of use as the other students in his classes or in an integrated manner.

[x--- paragraph redacted ---x]

In addition, the evidence shows that the College did not review specific requirements and materials for the Student's courses and therefore did not provide course materials in a format that was accessible to the Student.

[x--- paragraph redacted ---x]

OCR notes that it did not conduct a review of the College's website or its course pages to determine whether it provides web access to students with visual impairments, because, in this case, the Student was not trained on how to use screen readers and could not access the information. This evidence demonstrates that students without disabilities were afforded the opportunity to read course materials provided by the instructors, while the Student was not afforded that same opportunity.

OCR also finds that, in determining the appropriate accommodations for the Student, the College failed to consider whether any academic adjustments, such as extended time to complete assignments, or modified assignments, were necessary for the Student.

[x--- paragraph redacted ---x]

OCR finds that the College's asserted reasons for the Student's performance in the summer 2014 classes, i.e., that he failed to regularly attend class, failed to complete his assignments, and/or scored poorly on quizzes and tests, fail to explain the Student's performance in those classes. The College's assertion is negated by the evidence demonstrating that the Student attended almost all of the sessions for Learning Strategies and supporting that the lack of appropriate and effective academic adjustments and auxiliary aids and services is what caused the Student to frequently miss the other class sessions. Moreover, the Student was not able to fully participate in the in-class assignments and activities, he was not able to access all of the course materials, and he was not able to access and interact with the information being provided in class or in the textbooks without necessary academic adjustments, which were not provided to the Student. Based on the totality of the above information, OCR concludes that the Student was not afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as students without disabilities.

Furthermore, the College did not take steps to prevent the Student from being excluded from equal participation in his classes because of the lack of appropriate and effective academic adjustments and/or auxiliary aids and services. The auxiliary aids and services that were provided to the Student were not in an accessible format, were not provided in a timely manner and were not provided in a way that would protect the privacy and independence of the Student. The accommodations or modifications that were available to the Student were only available at certain times and outside of the classroom environment, which was not equally effective nor appropriately integrated where other students had access to the same information at any time and any location and were able to participate in class with other students. OCR notes that because of the lack of appropriate and effective accommodations, the Student spent much of his time either sitting in class doing nothing or attempting to obtain, piecemeal, the assistance he required.

As noted above, during the course of OCR's investigation, OCR also identified concerns with respect to the College's disability services policies. For example:

- The College's website states that the registration process for students with disabilities requires that they complete an Intake Form that does not ask questions

about students' disabilities or requested accommodations. The Intake Form is an additional and unnecessary obstacle to students who are seeking to accommodate a disability.

- The College's documentation requirements are not reasonable. For example, rather than require documentation that focuses on whether the student has an impairment that substantially limits a major life activity and that supports the need for an academic adjustment, the College's website states, and the director of support services confirmed, that the College will only provide the specific accommodations requested in writing by students' licensed medical professionals. Thus, the College does not take into account the individualized needs of the student in each specific class on their schedule and does not consider the input of the student with the disability.
- The College's website states that students are required to pay for all assistive technology. It does not state that if an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, then the College will provide such an aid.

### **Resolution and Conclusion**

On November 5, 2015, the College signed the enclosed resolution agreement, which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. In summary, the resolution agreement requires the College to: (1) send a letter notifying the Student of his opportunity to re-take American Foundations and Learning Strategies, or comparable courses up to a total of 6 credits, during any term in the next two academic years; (2) notify the Student that his transcript can be modified, at his option, to reflect withdrawal from the Summer 2014 courses; (3) notify the Student that should he choose to-reenroll, he will schedule and attend a meeting with the Director of Support Services to discuss necessary modifications to its academic adjustments and auxiliary aids and services; (4) notify the Student that, should he choose not to re-enroll at the College, the College will reimburse him for expenses related to College-required books, fees, and supplies he incurred for the courses he took during the Summer 2014 term; (5) provide approved services or reimbursement, depending on the Student's choice; (6) revise and submit to OCR for review its Support Services policies contained on the College website to ensure they conform with Section 504 and Title II and delete the Intake Form from the College website in relation to disability services materials; (7) notify all College instructors, support Services staff, and other staff who work with students with disabilities of the College's obligation to comply with Section 504 and Title II as they relate to students with disabilities in the postsecondary education setting; and (8) submit for review and approval training designed to inform all personnel in the College's Support Services Department of the College's obligation to comply with Section 504 and Title II as they relate to providing academic adjustments and auxiliary aids to students with disabilities in the postsecondary education setting and effective communications with persons with disabilities, and provide such training to all Support Services Department personnel.

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 alleging such treatment. If this happens, the harmed individual 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 file a private suit in federal court, whether or not OCR finds a violation. OCR appreciates your cooperation and that of the District during the investigation and resolution of this complaint. If you have any questions about this letter or OCR’s resolution of this case, please contact xx xxxx xxxx at (xxx) xxx-xxxx.

For questions about implementation of the Agreement, please contact xx xxxxxxxx xxxxxx, who will be monitoring the College’s implementation, by telephone at (xxx) xxx-xxxx or by e-mail at xxxxxxxx.xxxxxx@ed.gov. We look forward to receiving the College’s first monitoring report by December 1, 2015.

Sincerely,

/s/

Meena Morey Chandra  
Director

Enclosure