

- whether the College is excluding a student with a disability from participation in, denying her the benefits of, or otherwise subjecting the student to discrimination under its academic program in violation of Section 504's implementing regulation at 34 C.F.R. § 104.43;
- whether the College has taken such steps necessary to ensure that a student with a disability is not excluded from participation in the College's program because of the absence of auxiliary aids in violation of Section 504's implementing regulation at 34 C.F.R. § 104.44(d);
- whether the College failed to furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, its service, program, or activity in violation of Title II's implementing regulation at 28 C.F.R. § 35.160(b);
- whether the College has failed to take appropriate steps to ensure that communications with a student with a disability are as effective as communications with others in violation of Title II's implementing regulation at 28 C.F.R. § 35.160(a); and
- whether the College, on the basis of disability, subjected a student to a hostile environment, i.e., harassment that was sufficiently severe, pervasive, or persistent, so as to interfere with, or limit the student from participation in, deny the student the benefit of, or otherwise subject the student to discrimination under any program or service of the College, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a).

OCR began its investigation of this complaint by reviewing information provided by the Student and the College. Prior to the completion of OCR's investigation, however, the College asked to resolve the complaint allegations pursuant to Section 302 of OCR's Case Processing Manual (CPM). The College therefore signed the enclosed agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. A summary of OCR's investigation to date, the applicable legal standards, and the terms of the agreement are presented below.

Summary of Investigation to Date

The Student is xxxxxxxxxxxxxx and attended the College during the 2015-2016 academic year. The Student was registered with the College's disability services office (ODS) and that office agreed to provide her with xxxxxxxxxxx xxxxxxxx xxxxxxxxxxxxxx as a disability-related service.

[xxx paragraph xxx]

The Student also alleged that the xxxxxx xxxxxxxxxxxxxx subjected her to harassment when she xxxxxxxxxxx xxxxx xxxxxx xxxxxxx xx xxxxxxx xxxxxxxxxxxxxx xxxxxxxxxxxxxx even though the Student and other students repeatedly informed her that xxxxxxx xxxxxxxx xxxxxxxx xxxxxxx xxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx

[xxx paragraph xxx]

The College submitted a copy of its ODS Policies and Procedures Handbook, which Described the College’s procedures for requesting accommodations, including requests for xxxxxxx xxxxx xxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxxxx xxxxx xxxxx.

Applicable Legal and Policy Standards

- Auxiliary Aids and Services; Effective Communication

Pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.44(d), a postsecondary recipient 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.

The regulation implementing Title II, at 28 C.F.R. § 35.160(a), requires public entities to 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. Further, a public entity must furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of the public entity. 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; 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, a public entity must give primary consideration to the requests of individuals with disabilities. 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. 28 C.F.R.

§ 35.160(b).

When interpreting what constitutes “primary consideration,” guidance provided by the U.S. Department of Justice in Appendix B to the Title II regulation states that a public entity must provide an opportunity for individuals with disabilities to request the auxiliary aids and services of their choice. This expressed choice must be given primary consideration by the public entity and the public entity must honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under 28 C.F.R. § 35.164.

At 28 C.F.R. § 35.164, the Title II regulation states that a public entity is not required to take any action under Subpart E to the regulation (Communications) that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance with this subpart would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of the public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart would result in such an alteration or such burdens, a public entity must take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services provided by the public entity.

- Disability Harassment

The Section 504 implementing regulation 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 that receives federal financial assistance. Title II’s implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Disability harassment is a form of disability discrimination prohibited by Section 504 and Title II. Disability harassment is intimidation or abusive behavior toward a student based on disability that creates a hostile environment by interfering with or denying a student’s participation in or receipt of benefits, services, or opportunities in a school’s program. Harassing conduct may take many forms, including verbal acts and name-calling, as well as nonverbal behavior, such as graphic and written statements, or conduct that is physically threatening, harmful, or humiliating.

Schools have a legal responsibility to prevent and respond to disability harassment. The responsibility to respond to disability harassment, when it does occur, includes taking prompt and effective action to end the harassment and prevent it from recurring and, where appropriate, remedying the effects on the student who was harassed.

In addressing harassment allegations, OCR has recognized that the offensiveness of a particular expression, standing alone, is not a legally sufficient basis to establish a hostile environment under the statutes enforced by OCR. In order to establish a hostile environment, harassment must be sufficiently serious (i.e., severe, persistent or pervasive) as to limit or deny a student's ability to participate in or benefit from an educational program. OCR's regulations and policies do not require or prescribe speech, conduct or harassment codes that impair the exercise of rights protected under the First Amendment.

Voluntary Resolution and Conclusion

As noted above, before OCR completed its investigation into the complaint allegations, the College asked to resolve the complaint pursuant to Section 302 of OCR's CPM. The CPM provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the College, nor does it constitute a determination by OCR that the College has violated any of the laws that OCR enforces. The provisions of the resolution agreement are aligned with the complaint allegations and the information obtained during the investigation and consistent with applicable regulations.

The College has signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The resolution agreement requires the College to: (1) Provide timely xxxxxx xxxxxx xxxxxx xxxxxx for all programs and activities, without requiring unreasonable advance notice; (2) review and assess the College's system for providing xxxxxx xxxxxx xxxxxx services and take steps as necessary, such as hiring additional xxxxxxxx xxxx, to ensure that students who are xxxxx xxx xxxxxxxx receive the auxiliary aids and services necessary to provide them with equal access to the College's programs and activities; (3) provide OCR with information regarding the communication auxiliary aids and services it offered/provided xxxxx xxxxxxxx xxxxxxxx during the 2016-2017 academic year; (4) develop and conduct a survey of, and offer to hold individual meetings with, xxxxxx xxxxxxxx enrolled during the 2015-2016 academic year to obtain input regarding disability-related climate issues and issues with student-specific accommodations; and (5) provide training to ODS staff and managers on the requirements of Section 504 and Title II.

In light of the signed agreement, OCR finds that this complaint is resolved, and we are closing our investigation as of the date of this letter. OCR will, however, monitor the College's implementation of the agreement. Should the College fail to fully implement the agreement, OCR will reopen the case and resume its investigation of the complaint allegations.

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.

We appreciate the cooperation of College staff during the preliminary investigation and resolution of this complaint. The OCR contact person for the monitoring of the agreement is xxxxxx xxxxxxxx xxxxxx, who may be reached at xxxx xxxx xxxxxxxx or xxxxxxxxxxxxxxxxxxxxxx. We look forward to receiving the College’s first monitoring report by January 13, 2017, and the report should be directed to xx xxxxxxxx. If you have any questions about this letter or OCR’s resolution of this case, please contact xxxxxxxxxxxxxxxxxxxxxx, at xxx xxxx xxxxxx or at xxxxxxxxxxxxxxxxxxxxxx.

Sincerely,

/s

Xxxxxxxxxx xxxxxxxxxxxxxx
Xxxxxxxxxx xxxxxxxxxxxxxx

Enclosure