



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

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

MAR 30 2012

Dr. Susan Herbst
Office of the President
University of Connecticut
352 Mansfield Road, Unit 2048
Storrs, Connecticut 06269-2048

Re: Complaint Nos. 01-11-2072 and 01-12-2001

Dear President Herbst:

The purpose of this letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR) is closing the investigation of the above-referenced complaints filed against the University of Connecticut (University).

The complaints were filed on behalf of students who attended the [REDACTED] (b)(7)(C) [REDACTED] program, and the [REDACTED] (b)(7)(C) [REDACTED] program. The complaints alleged that the University discriminated against students with disabilities in the [REDACTED] (b)(7)(C) [REDACTED] groups on the basis of their disability by refusing to renew the [REDACTED] (b)(7)(C) [REDACTED] rental agreements and refusing to discuss accommodations or modifications to either the [REDACTED] (b)(7)(C) [REDACTED] programming or the University's safety requirements before electing to not renew their leases. As explained below, OCR is closing these complaints because the University has agreed to take actions that will address the Complainants' allegations.

OCR initiated an investigation of the Complainants' allegations pursuant to our authority under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504), and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II). Section 504 and Title II broadly prohibit disability discrimination by educational institutions. The University is subject to Section 504 because it is a recipient of Federal financial assistance from the Department. The University is subject to Title II because it is a public entity operating a postsecondary educational system.

OCR opened the following issue for investigation:

- Whether the University discriminated against two groups of students with disabilities on the basis of their disability when it refused to renew the [REDACTED] (b)(7)(C) [REDACTED] leases at its Stamford campus, in violation of 34 C.F.R. Section 104.4 and 28 C.F.R. Section 35.130(h) and 28 C.F.R. Section 35.130(b)(7).

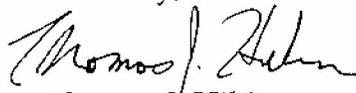
(b)(7)(C) During the course of the investigation and before OCR reached a compliance
determination, the University, through its counsel, expressed an interest to voluntarily
resolve the complaint. After negotiations between OCR and University counsel, the
University agreed to take certain steps, memorialized in the enclosed Resolution
Agreement (Agreement). Through this Agreement, the University agrees to reinstate
(b)(7)(C) ██████ lease for the 2012-2013 academic year for both programs and decrease the rental
rate by 25 percent. The University also agrees to renegotiate a Memorandum of
(b)(7)(C) Understanding (MOU) with ██████ and create a process so either party can raise
concerns about compliance with the terms of the MOU and the University's Facility Use
Agreement (FUA). Additionally, the University has agreed to hold a roundtable
discussion that will focus on the following topics: ██████ as a disability, best practices (b)(7)(C)
(b)(7)(C) for interacting with young adults with ██████, potential safety issues or safety protocols
for dealing with possible violent behavior from young adults with ██████ and the (b)(7)(C)
University's obligations under Title II of the Americans with Disabilities Act of 1990
and Section 504 of the Rehabilitation Act of 1973.

OCR determined that the provisions of the Agreement are aligned with the allegations
and the preliminary information obtained during the investigation. Additionally, the
provisions are consistent with the applicable regulations. Accordingly, we are closing
our investigation of this complaint as of the date of this letter. Consistent with OCR's
monitoring provisions, the University has agreed to provide OCR with a monitoring
report in June 2012.

The information contained in this letter is not intended and should not be construed to
cover any other issues regarding compliance with the regulations implementing Section
504 or Title II that may exist but are not discussed herein.

OCR would like to thank you and Assistant Attorney General Ralph Urban for your
assistance in resolving this complaint. If you have any questions, please contact
Investigator Jamie Sinetar at (617) 289-0055 or by electronic mail at
Jamie.Sinetar@ed.gov or by facsimile at (617) 289-0150; or Senior Civil Rights Attorney
Beth Downs at (617) 289-0015, or by email at Beth.Downs@ed.gov. You may also
contact me directly at (617) 289-0111.

Sincerely,



Thomas J. Hibino
Regional Director

Enclosure

cc: Assistant Attorney General Ralph Urban

Resolution Agreement
University of Connecticut
Complaint Nos. 01-11-2072, 01-12-2001

Provisions:

To resolve Complaint Nos. 01-11-2072 and 01-12-2001, which was filed under Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 and their implementing regulations, the University of Connecticut - Stamford (UConn) agrees to the following actions:

1. The University agrees to hold a roundtable discussion with relevant staff present, including at a minimum [REDACTED] staff, the Director of UConn Stamford, a UConn Police representative/official, an expert in the field of [REDACTED] and [REDACTED] disabilities and any other attendees one or both parties feel are necessary to discuss the following:

- a. The best practices for interacting with young adults with [REDACTED]
- b. A better understanding of [REDACTED] as a disability;
- c. Potential safety issues/safety protocols for dealing with possible violent behavior from young adults with [REDACTED]

d. Consistent with Title II of the Americans with Disabilities Act of 1990, as revised, at 28 C.F.R. Section 35, specifically 28 C.F.R. Section 35.130(b)(7), 35.130(g) and 35.130(h), a public entity's obligation to avoid discrimination by modifying its policies, practices and procedures for individuals with disabilities, unless those modifications fundamentally alter the nature of the services, programs or activities of the public entity; and consistent with Section 504 of the Rehabilitation Act of 1973, the recipient's obligation to generally not discriminate against individuals on the basis of their disability.

2. The University agrees to renegotiate a Memorandum of Understanding (MOU) with [REDACTED] related to its rental space and the operation of [REDACTED] Program and high school program. The MOU will include:

a. An acknowledgment that [REDACTED] clients are disabled and recognition of their disability-related characteristics / behaviors.

b. A revised safety protocol that anticipates the type of behaviors that [REDACTED] clients may exhibit, is consistent with UConn's general safety codes and that carefully details how [REDACTED] will handle behavior that may represent a public safety threat in UConn buildings or otherwise violate UConn's safety procedures. This protocol will establish a disciplinary process for how safety rules will be applied to [REDACTED] students. In this process, UConn will consider [REDACTED] reasonable requests for modifications or accommodations to its policies, procedures or

practices for its clients, taking into consideration the nature of their disabilities, and the lessor/lessee relationship [REDACTED] has with UConn. The UConn Police Department will be involved in the development of this protocol. (b)(7)(C)

(b)(7)(C) 3. Assuming standard University required terms are included, the University agrees to reinstate [REDACTED] lease (Facility Use Agreement ("FUA")) for the same space or its approximate equivalent for the 2012-2013 academic year for both the [REDACTED] Program and the high school program. This lease will be subject to available space in the building and the needs of the University, and subject to negotiation between the parties each year. (b)(7)(C)

(b)(7)(C) 4. If, after the 2012-2013 year, [REDACTED] wishes to continue its relationship with UConn Stamford, it shall provide reasonable written notice to UConn that it wishes to continue the leasing of space in the Stamford Academic Building. If the University determines that it can no longer lease to [REDACTED] it will provide [REDACTED] with its standard notice of its non-renewal decision, and will provide the reasons behind its decision to no longer lease the space, e.g., the increased demand of UConn Stamford programming or a nondiscriminatory determination by UConn to cut back on its leasing of space. During the terms of the 2012-2013 lease, [REDACTED] rental rate will be decreased by 25% for both programs, to compensate for the expense and inconvenience associated with the relocation of the [REDACTED] and high school programs. Facilitated by OCR, the University agrees to develop a process with [REDACTED] to be followed so that either party to the MOU and the University's Facility Use Agreement (FUA) can raise concerns about compliance with the terms of each, and how the parties will seek to resolve such disputes. UConn agrees to consider [REDACTED] reasonable requests for modifications in its policies, practices and procedures as they affect [REDACTED] clients, if any, in this process, as long as there is an understanding that UConn's obligation to "accommodate" [REDACTED] and/or its clients, or to make modifications to its policies, practices and procedures is the duty owed to an individual with disabilities as a lessee, a client of a lessee or a patron and not as a student enrolled at UConn. If after good faith consultation and discussion the parties cannot resolve any such dispute, so long as UConn's decision with respect to the issue is nondiscriminatory, UConn's decision shall be controlling. (b)(7)(C)

Reporting Requirements:

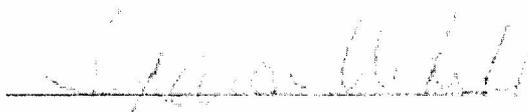
By June 1, 2012, the University agrees to submit the following:

(b)(7)(C) 1. Information demonstrating that a roundtable discussion was held with representatives from [REDACTED] and other attendees as detailed in section 1 of this Agreement. The University will provide a list of attendees, as well as minutes or other written documentation from the meeting demonstrating the discussion of the [REDACTED]-related issues as required in this provision. (b)(7)(C)

2. A copy of the MOU and FUA reached between UConn Stamford and [REDACTED] as required by #2 and #3 above. (b)(7)(C)

3. Information demonstrating that the University has developed the dispute resolution process required by #4 above.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act of 1973, at 34 C.F.R. Section 104.4, and regulation implementing Title II of the Americans with Disabilities Act of 1990, at 28 C.F.R. Section 35.130(b)(7), 35.130(g), and 35.130(h) which were at issue in this case. The University 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 this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act of 1973, at 34 C.F.R. Section 104.4, and regulation implementing Title II of the Americans with Disabilities Act of 1990, at 28 C.F.R. Section 35.130(b)(7), 35.130(g), and 35.130(h) which were at issue in this case.



Dr. Sharon White
Director
University of Connecticut Stamford



Date



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

5 POST OFFICE SQUARE, 8TH FLOOR
BOSTON, MASSACHUSETTS 02109-3921

Joyce Judy
President
Community College of Vermont
P.O. Box 489
Montpelier, Vermont 05601

APR 06 2012

Re: Complaint No. 01-12-2008

Dear President Judy:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), is closing the investigative phase of the above-referenced complaint filed against the Community College of Vermont (College). The Complainant alleged that the College discriminated against her, on the basis of disability, when staff insisted that she submit medical documentation to substantiate her need for a service animal before the College would allow the service animal to accompany her to classes at the College. As explained below, a resolution agreement (Agreement) was reached between OCR and the College during our investigation, resolving the allegation OCR accepted for investigation. A copy of the Agreement is enclosed.

OCR investigated the complaint because the allegation falls within our jurisdiction under Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504) and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation found at 28 C.F.R. Part 35 (Title II), both of which prohibit discrimination on the basis of disability. The College is subject to Section 504 because it is a recipient of Federal financial assistance from the U.S. Department of Education. As a public entity, the College is also subject to Title II, which prohibits disability-based discrimination in all services, programs and activities of public entities.

OCR opened the following legal issue for investigation:

- Whether the College discriminated against the complainant, based on disability, by preventing her from participating in, denying her the benefits of, or otherwise subjecting her to discrimination in programs and/or activities provided by the College, because she was accompanied by a service-dog, in violation of 34 C.F.R. Sections 104.4 and 28 C.F.R. Section 35.136.

Before the College requested to resolve the allegations, OCR had interviewed the Complainant and reviewed documents that she had provided. OCR also spoke with College administrators, who confirmed that it was the College's practice to treat the use of a service animal as an academic adjustment/accommodation, requiring documentation of the disability and of the specific need for a service animal as an accommodation. College administrators confirmed the Complainant's account that, accordingly, they had required documentation of her disability, and of how her service animal would address any needs related to that disability, before she could bring her service animal to campus.

OCR discussed with the College that recent changes to the Title II regulation (which became effective March 15, 2011) mandate a different process for the use of service animals than is generally acceptable for processing requests by students with disabilities who seek academic adjustments and/or auxiliary aids and services. Specifically, at 28 C.F.R. Section 35.156, the revised Title II regulation provides the limited, specific questions that may be asked of an individual with a service animal who seeks access to a covered entity's programs, services and activities. As OCR further explained to the College, the same section further governs a public entity's ability to regulate the use of a service animal. OCR also noted to the College that, because Section 504 does not set a lesser standard than Title II, OCR interprets Section 504 to include similar requirements regarding service animals.

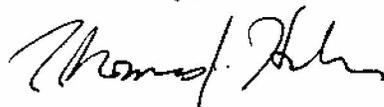
When OCR brought this regulatory change to your attention, you immediately expressed an interest and willingness to revise the College's policies, procedures and practices regarding service animals to comply with the requirements of Title II and Section 504. Accordingly, to resolve this complaint, the College agreed to develop policies and procedures that ensure its compliance with 28 C.F.R. Section 35.136, as well as 34 C.F.R. Section 104.4, regarding service animals. Once such policies and procedures are developed, they will be read and approved by the President's Council and disseminated to all College faculty and staff. Additionally, relevant college staff and all new faculty will be trained on the College's policies and procedures, and on their responsibilities in implementing those changes, regarding service animals. These steps are detailed in the enclosed Agreement.

OCR finds that the resolution offered by the College is aligned with the allegation and with information obtained by OCR. In addition, the resolution offered is consistent with the requirements of Section 504 and Title II. Accordingly, we are closing this investigation as of the date of this letter. Consistent with our usual practice, OCR will monitor the College's implementation of the Agreement.

The matters addressed in this letter are not intended and should not be construed to cover any other issues regarding compliance with the regulations implementing Section 504 or Title II that may exist but are not discussed here.

We wish to thank you and your staff, particularly Penne Ciaraldi, ADA Compliance Officer, for your cooperation and assistance in resolving this complaint. If you have any questions about this letter or our processing of your complaint, please contact Ms. Ricker by telephone at (617) 289-0049, or via email at ruth.ricker@ed.gov, or Civil Rights Attorney Meighan McCrea at (617) 289-0052, or via email at meighan.mccrea@ed.gov. You may also contact me directly at (617) 289-0120.

Sincerely,



Thomas J. Hibino
Regional Director

Enclosure

Resolution Agreement
Community College of Vermont
Complaint 01-12-2008

In order to resolve the above-referenced complaint, filed pursuant to Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at Part 35 (Title II), as well as Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at Part 104 (Section 504), the College voluntarily agrees to take the following actions:

1. By **April 1, 2012**, the College will develop and submit to OCR for its approval, policies and procedures to implement the requirements of 28 C.F.R. Section 35.136 and 34 C.F.R. Section 104.4 regarding the rights of individuals with disabilities to be accompanied by service animals in all areas of the College's campuses where members of the public, participants in services, programs or activities, or invitees, as relevant, are allowed to go. Such policies and procedures will include:
 - o The definition of a service animal;
 - o Where service animals are allowed on campuses;
 - o The permissible inquiries that may be made of a person with a service animal;
 - o The process by which faculty/staff may raise any questions or concerns about service animals, including to whom such concerns should be raised at the College (such as if a particular animal appears uncontrolled or not housebroken, as noted at 28 C.F.R. Section 35.136(b)); and
 - o The procedure the College will use if it wishes to exclude a service animal in a manner consistent with 28 C.F.R. Section 35.136(b).

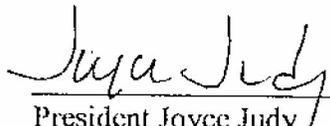
2. Upon OCR's approval of the above policies and procedures, the College will:
 - a) Issue a Memorandum, via email, to all faculty and staff regarding the College's new policies and procedures. This Memorandum will specifically inform faculty and staff of: 1) the permissible inquiries that may be made of a person with a service animal, and 2) the process by which faculty/staff may raise any questions or concerns about service animals, including to whom such concerns should be raised at each College campus. The College will provide to OCR a copy of this Memorandum and documentation of its distribution, **by June 1, 2012**.

 - b) Disseminate the new policies and procedures, by notifying current students via email of the new policies and procedures and by posting the new policies and procedures on the College's website in such a way that they are easy to find and access by students, faculty, applicants, employees and interested members of the general public. The College will provide documentation to OCR evidencing that this information was disseminated as described above, **by June 1, 2012**.

3. Also by **June 1, 2012**, the College will submit to OCR documentation, such as the training materials used and a completed attendance sheet, showing that it provided training for administrators and staff who are responsible for implementing disability policies and procedures on the requirements of Title II and Section 504, as well as the College's related policies and procedures, regarding service animals. Such documentation will include evidence that the training incorporated:

Resolution Agreement, OCR Complaint No. 01-12-2008

- The distinctions between the accommodations process for students with disabilities and the rights of persons with disabilities to be accompanied by a service animal;
 - The definition of a service animal;
 - The permissible inquiries that may be made of a person with a service animal; and
 - To whom at the College faculty/staff may raise any questions and/or concerns about service animals.
4. The College understands that OCR will not close the monitoring of this agreement until OCR determines that the College has fulfilled the terms of this agreement and is in compliance with 28 C.F.R. Section 35.136 and 34 C.F.R. Section 104.4, the regulations which were at issue in this case.
5. The College 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 this agreement. Further, the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this Agreement and is in compliance with 28 C.F.R. Section 35.136 and 34 C.F.R. Section 104.4, the regulations which were at issue in this case.
6. The College understands that if OCR determines that it is necessary to visit the College as described in Paragraph 5, OCR will only do so with prior notice and at reasonable times.



President Joyce Judy
Community College of Vermont

3-21-2012
Date



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
MIDWESTERN DIVISION, CHICAGO OFFICE

OCT 7 2011

Dr. Michael J. Hogan
President
University of Illinois at Chicago
1200 W. Harrison Street
Chicago, IL 60607

Re: OCR Docket # 05-11-2163

Dear Dr. Hogan:

This is to advise you of the disposition of the complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR), on April 12, 2011, alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University of Illinois at Chicago (University) discriminates against students with disabilities, who because of their disability are unable to use fixed-route Chicago Transit Authority vehicles, by offering the U-PASS transit benefit to full-time students while denying the U-PASS benefits to full-time students with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibits 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. § 12132, and its implementing regulation at 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to the provisions of Section 504 and Title II.

Prior to the conclusion of OCR's investigation, during discussions with OCR, the University requested to resolve the complaint and signed the enclosed Resolution Agreement which, when fully implemented, will address the issues raised in the complaint. In accordance with Section 302 of OCR's *Case Processing Manual*, the provisions of the Resolution Agreement are aligned with the complaint allegation and the information obtained during OCR's investigation of this complaint effective the date of this letter. OCR will, however, monitor the University's implementation of the Resolution Agreement. We look forward to receiving documentation from the University on or about March 9, 2010, and quarterly thereafter until January 20, 2012, to confirm its implementation of the Resolution Agreement.

500 W. MADISON ST., SUITE 1475, CHICAGO, IL 60661
www.ed.gov

If you have any question about this matter, please do not hesitate to contact Ann Cook-Graver at 312.730.1571 or by email at ann.cook-graver@ed.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Aleeza Strubel".

Aleeza Strubel
Team Leader/Supervisory Attorney

Enclosure

Resolution Agreement
University of Illinois at Chicago
OCR Complaint # 05-11-2163

The University of Illinois at Chicago (University) submits the following agreement to the U.S. Department of Education, Office for Civil Rights (OCR) to resolve OCR complaint #05-11-2163. The University submits this agreement to ensure its compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. § 104.61, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132, and its implementing regulation, 28 C.F.R. § 35.130, with regard to the allegation raised in this complaint.

The University agrees to the following:

1. By May 7, 2012, and so long as the University offers the U-Pass Program, the University will make available to all U-Pass eligible "paratransit students" transportation benefits that are equal to the transportation benefits provided to eligible students under the University's U-Pass program. (For purposes of this agreement, this shall be referred to as the "Paratransit U-Pass Program.") The term, "paratransit students," refers to eligible students with disabilities who are unable, because of their disability, to use fixed route public transportation and instead use paratransit public transportation. The Paratransit U-Pass Program must provide transportation benefits for paratransit students on paratransit vehicles for all hours that U-Pass is available to students and subject to a fee that is not greater than the fee paid by students for U-Pass. If the University ceases to provide the U-Pass Program, the University is not required to make available the Paratransit U-Pass Program.

REPORTING: By March 9, 2012, the University will provide OCR a written description of its planned Paratransit U-Pass Program and how the University intends to implement the Paratransit U-Pass Program by May 7, 2012. By November 9, 2012, the University will provide OCR a list of paratransit students who (1) requested to participate in the Paratransit U-Pass and (2) are participating in the Paratransit U-Pass Program.

2. By March 9, 2012, the University will take steps to widely publicize the availability of the Paratransit U-Pass Program, including by providing notice of the Program on its website.

REPORTING: By March 9, 2012, the University shall provide OCR with documentation of its compliance with Item #2. At a minimum, the University's documentation will include a copy of any notices, electronic messages and/or letters, or postings on University web pages that inform students with disabilities about the Paratransit U-Pass Program.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with

the regulations implementing Section 504 at 34 C.F.R. §§ 104.4, 104.43 and 104.44 and Title II at 28 C.F.R. § 35.130, which were at issue in this case.

The University 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 this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 C.F.R. §§ 104.4, 104.43 and 104.44 and Title II at 28 C.F.R. § 35.130, which were at issue in this case.

Approved and agreed to on behalf of University by:

Walter K Know
For the University

10/7/2011
Date



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

600 SUPERIOR AVENUE EAST, SUITE 750
CLEVELAND, OH 44115-2611

MAR 16 2012

REGION XV
MICHIGAN
OHIO

Dave Armstrong, Esq.
General Counsel
Notre Dame College
4545 College Road
South Euclid, Ohio 44121

Dear Mr. Armstrong:

An article in the February 25, 2012, Cleveland Plain Dealer Metro Section described Notre Dame College's for-fee program for students with learning disabilities operated by the College's Academic Support Center. A review of information about this program available on the College's website indicates that the program's offerings include the provision of certain academic adjustments and auxiliary aids and services, and that students apply for this program at the time of their general application to the College. We have become aware, as was also mentioned in the newspaper article, that a number of postsecondary colleges and universities in Ohio are currently offering similar for-fee programs for students with learning impairments and other disabilities. In fact, we recently entered into a resolution agreement with an Ohio school to resolve violations of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, with regard to that school's for-fee program. I am writing to you to discuss concerns that such programs raise under Section 504 and to offer assistance to the College in ensuring compliance with the laws enforced by the U.S. Department of Education, Office for Civil Rights.

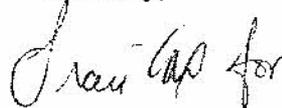
Please note that, pursuant to the Section 504 implementing regulation at 34 C.F.R. § 104.42, postsecondary education recipients may not make preadmission inquiry as to whether an applicant for admission is a person with a disability unless taking remedial action to correct the effects of past discrimination, under 34 C.F.R. § 104.6(a), or when the recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted programs or activity, under 34 C.F.R. § 104.6(b). If the recipient is making preadmission inquiry pursuant to one of the two permissible reasons, the recipient must state clearly on any written questionnaire used for this purpose, or make clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts, and the recipient must state clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with the regulation.

With regard to the charging of fees for a program geared toward students with disabilities, the Section 504 regulation requires, at 34 C.F.R. § 104.44(a), that a recipient 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. The Section 504 regulation further 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. Section 104.44(d)(2) goes on to explain that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students. Once needed auxiliary aids and services for a student with a disability have been identified, a recipient may not require the student to pay part or all of the costs of such aids and services, nor may the recipient charge students with disabilities more for participating in programs or activities than they charge students who do not have disabilities.

It may be permissible for a recipient postsecondary institution to provide additional supports and services beyond those required by Section 504 as a benefit for students with disabilities through a fee-based program. However, the recipient must be able to account in detail for the specific costs involved for each service being provided through the for-fee program and demonstrate that fees are not being charged for academic adjustments and auxiliary aids and services. Additionally, the recipient should prominently notify students of its free disability services, specifically, the services that the recipient is required to provide students with disabilities for no additional charge under Section 504. The recipient's disability services should be publicized at least as much as the for-fee program is, including in recruiting materials and sessions, the recipient's website, student handbooks, and other informational materials. Furthermore, students with disabilities must be given an opportunity to receive other services, such as academic advising, equal to that which is provided to students without disabilities. If students without disabilities are not being charged for such services, then students with disabilities likewise should not be charged for them. See 34 C.F.R. § 104.43.

As explained above, we are available to provide further technical assistance to the College with respect to the requirements of Section 504 as they pertain to the Academic Support Center and any other programs or services of the College. Please do not hesitate to contact Traci Ext, Chief Attorney, at (216) 522-2671 at any time to discuss this issue or any of the other laws that OCR enforces.

Sincerely,



Catherine D. Criswell
Director



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

600 SUPERIOR AVENUE EAST, SUITE 750
CLEVELAND, OH 44114-2611

REGION XV
MICHIGAN
OHIO

NOV 30 2011

Amberly Acuff Brennan, Esq.
Collins & Blaha, P.C.
31700 Middlebelt Road, Suite 125
Farmington Hills, Michigan 48334-2374

Re: OCR Docket # 15-11-2074

Dear Ms. Brennan:

This letter is to notify you of the disposition of the complaint filed April 6, 2011, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Mott Community College (the College). The complaint alleged that the College had discriminated against a student (the Student) on the basis of disability by failing to provide him with academic adjustments needed because of his attention deficit hyperactivity disorder (ADHD). Specifically, the complaint alleged that the College had discriminated against the Student by not providing: the opportunity to listen to music during testing; extra time to complete written assignments; the option to take quizzes in a distraction-free environment; the option to take quizzes in a format other than "Blackboard"; books on tape in a timely manner; and a weekly list of assignments. The complaint also alleged that the College failed to provide the Student with effective access to a grievance process.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. 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, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the College is subject to these laws; therefore, OCR had jurisdiction to investigate this complaint. Based on the complaint allegations, OCR opened an investigation into the following legal issues:

1. whether the College failed to make such modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate or have the effect of discriminating against a qualified student with a disability on the basis of disability and/or failed to take such steps as are necessary to ensure that no student with a disability was 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, in violation of Section 504's implementing regulation at 34 C.F.R. § 104.44;
2. whether the College failed to take appropriate steps to ensure that communications with a student with a disability were as effective as communications with others in violation of Title II's implementing regulation at 28 C.F.R. § 35.160; and
3. whether the College failed to provide a student with a prompt and equitable process to resolve a complaint alleging actions prohibited by Section 504 and Title II in violation of Section 504's and Title II's implementing regulations at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b), respectively.

Summary of OCR's Investigation to Date

During OCR's investigation to date, OCR reviewed documents submitted by the Student, (b)(6); (b)(7)(C) and the College. In addition, OCR interviewed the Complainant, the Student, and several College witnesses.

The Complainant advised OCR that, prior to the events at issue in this complaint, the Student was last enrolled in the College (b)(6); (b)(7)(C) In the fall of [redacted], the Student returned to the College to complete his associate's degree program. When the Student contacted the College's disability services office, he was told that he needed to provide updated information establishing his disability and related needs, which he asserts he submitted to the College by the end of November [redacted] (b)(6); (b)(7)(C)

The Student alleged that the College discriminated against him by failing to provide him with academic adjustments that he needed due to his disability. The Complainant claimed that the Dean of Student Services denied some of the requests because they were not included on her list of accommodations typically given to students with ADHD.

The College's Director of the Learning Center and Disability Services told OCR that she met with the Student and a disability specialist in August [redacted] to discuss his requested services. At that meeting, the Director informed the Student that he needed to provide updated documentation of his disability and his related needs. The College indicated that it did not receive the Student's documentation until January [redacted] The documentation that the Student submitted at that time, reflecting an exam performed on November [redacted] indicates that the Student has ADHD and recommends that the Student be given the following services: extended time on written assignments and (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

written exams; work in an area free of distractions; preferential seating; books on tape; recording of lectures; copies of PowerPoint lectures; breaks as needed; and permission to listen to classical music while taking exams. The report concludes by stating that the use of a computer to take exams would be helpful.

Documentation submitted by the College included copies of Instructor Notification forms issued by the disability services office for the Student for the [redacted] academic year. They state that the Student was to receive: distraction-free, extended test time in the Learning Center; alternative format texts; preferred seating; taped lectures; and "other." On a separate page, "other" was stated as:

(b)(6); (b)(7)
(C)

- If needed to: stand in class and walk around and/or leave class for a few minutes.
- An administrative arrangement has been made to allow the student to play approved music CDs during the test accommodations only at the Learning Center. This is not an accommodation under the law and does not transfer to any other location.

The Student claimed that on one occasion in October [redacted] he was not permitted to listen to music during his exam, which the College confirmed. The Dean told OCR that she believed that it was contradictory for music to assist with concentration for a student with ADHD. In addition, the Director stated that there was nothing in the documentation the Student had provided in the past supporting his need to listen to music. However, on October 22, [redacted], the College decided, as an administrative decision but not as an academic adjustment, to permit the Student to use music. On [redacted], after the Student complained about the characterization of the decision, the College granted music as an official academic adjustment.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

The Director advised OCR that the College denied the Student's request for extended time for written assignments, because that is not an adjustment generally provided for a student with an ADHD diagnosis. The Director also stated that the Student did not have a need for extra time, because he did not have a history of late assignments and does not have a learning disability. The Student's Needs Assessment and Accommodation Plan from the College, dated January [redacted] states that the College denied the Student's request for extended time for assignments because his "nature of disability is not or does not involve a learning disability; student will be able to pass the course(s) without an accommodation as evidenced by academic record w/ other accommodations for 5 years."

(b)(6); (b)(7)
(C)

With regard to alternative format texts, the Director advised OCR that, in order for students to receive books on tape, a student must provide the College with a receipt demonstrating that the student has purchased the materials to be put on tape. Along with the receipt, a student must submit an alternative format text request to the disability services office's administrative assistant. The student's disability specialist then researches and orders materials from a number of services, including Recording for the Blind and Dyslexic (RFB&D, now known as Learning Ally). The Director stated that each organization has its own turnaround time, which can be up to six weeks. In addition, the College has at times had to scan information or read material into audio

format. The College advised OCR that the College first requests materials from RFB&D and, if that avenue is unsuccessful, the College then requests permission from the publisher to convert the material into an electronic format. The College denied that it failed to provide alternative format texts to the Student in a timely manner, and noted that it approved the Student's request for a personal membership to RFB&D on March [redacted]

[redacted] It submitted records of its responses to the Student's requests for books on tape.

(b)(6); (b)(7)
(C)

The College asserted that it provided the Student the option to take quizzes in a distraction-free environment, per his accommodation plan, but that he chose not to do so at times. With regard to the Student's allegation regarding the option to take quizzes in a format other than Blackboard, the College asserted that the Student had made this request regarding a particular course during the winter [redacted] and that the request was not supported by his disability documentation and was not reasonable. With regard to the Student's allegation that he was not provided a weekly list of assignments, the College asserted that he was provided a list of assignments through course syllabi and had the ability to be aware of any assignments announced during class sessions by attending class and listening to the taped lectures available to him under his plan.

(b)(6); (b)(7)
(C)

OCR reviewed the College's Disability Services Student Handbook (the Handbook). The Handbook stated that the College is dedicated to provide the reasonable accommodations needed to ensure equal access to educational opportunities for individuals with verified disabilities. The Handbook included requirements for students to qualify for services. Included are the following provisions:

- students may be required to select a designated section of a course to receive interpreter services (due to the limited number of interpreters);
- students must maintain contact with their assigned disability services specialist at least three times a year (the start of the semester, prior to mid-term, and prior to final) to review progress and plan for continued delivery of services; and
- due to limited resources, disability services reserves the right to prioritize distribution of equipment or services.

The Complainant also alleged that the College failed to provide an equitable grievance procedure. The Complainant and the Student alleged that the College's grievance procedures were impossible to locate online and that they did not receive a reason why their accommodation requests for the Student were being denied.

The College provided OCR correspondence regarding complaints filed on the Student's behalf. On March [redacted] the Complainant sent a letter to the Dean, appealing the Director's denial of the Student's request to listen to music during exams as an accommodation. On March [redacted] the Complainant sent a letter to the Vice President of Student Services, appealing the decision to deny the Student's request for additional time for written assignments. On March [redacted] the Dean responded, granting the Student's request to take exams for the course [redacted] in the Learning Center with music, although stating that the music "is not considered a required accommodation under

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C) the law” and denying his requests for an alternative testing format for a particular course, a week-to-week schedule or work plan, and extended time on assignments. On March [REDACTED], the Student wrote a letter to the College's Vice President of Student Services, appealing the Dean's determinations. On April [REDACTED] the College's counsel sent a letter to the Complainant approving music as an accommodation; denying the request for a weekly assignment sheet; stating that the Student did not need extended time for written assignments; denying the request that the Student take quizzes in a format other than Blackboard; and stating that the Student was free to take quizzes in the Learning Center but chose not to do so. (b)(6); (b)(7)
(C)

OCR also reviewed the College's grievance procedures, which were included in the Handbook. The grievance procedures state that, if a student with a disability feels that he or she has not received accommodations that are appropriate, the student “must first consider” that the ADA requires that accommodations be developed in a dialogue between a student and the College. The procedures go on to state that colleges are not required to provide a student's requested or preferred accommodation but are required to provide reasonable, appropriate, and effective accommodations for disabilities that have been properly documented and requested through the appropriate procedure. The procedures further advise a student who has a complaint to first speak with the Director of Disability Services, whose phone number is provided. A student may also file a complaint with the College's ADA Compliance Officer, who is located in the Human Resources (HR) Department and whose phone number is also provided. The address of the HR department is not included in the procedures. The procedures state that, if the complaint is not resolved after these steps, a student should file a formal complaint to the Director and/or the ADA Compliance Officer. The procedures indicate that if a student is still not satisfied a formal complaint can be filed with OCR.

Applicable Legal Standards

The Section 504 regulation at 34 C.F.R. §104.4(b)(1)(ii) and the Title II regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit recipients or public entities 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 such as the College 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). Title II also requires, at 28 C.F.R. § 35.160(a), that public entities take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others.

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. Section 104.44(d)(2) goes on to explain that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students. The Title II regulation, at 28 C.F.R.

§ 35.160(b), requires that a public entity furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation states that 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; and that, 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.

For OCR to find that a postsecondary institution discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services, 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. With appropriate notice to students, postsecondary institutions such as the College may require students with disabilities to follow reasonable procedures to request academic adjustments.

In addition, the Section 504 regulation, at 34 C.F.R. § 104.7(b), requires a recipient to 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 provision at 28 C.F.R. § 35.107(b). OCR considers a number of factors in evaluating whether grievance procedures meet these regulatory requirements, 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 harassment/discrimination and to correct discriminatory effects on the complainant and others, if appropriate.

Grievance procedures may include informal mechanisms for resolving complaints to be used if the parties agree to do so. OCR has frequently advised recipients, however, that it is not appropriate for a student who is complaining of discrimination to be required to work out the problem directly with the individual alleged to be discriminating against him or her. 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. 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. A grievance process should not specify that a student work through the process and only file a complaint with OCR afterwards, as a complainant is free to file a complaint with OCR at any time. 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.

Voluntary Resolution

After this complaint was filed, the Student completed his education at the College [redacted] (b)(6); (b)(7)(C) [redacted] While OCR was investigating the complaint allegations and during activities related to the resolution of this complaint, the Student indicated that he was not seeking an individual remedy, as he has moved on from the College, but that he wanted the College to revise its procedures for the benefit of other students.

Before OCR completed its investigation, the College asked to resolve this complaint voluntarily under Section 302 of OCR's Case Processing Manual, which 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 recipient institution, 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 to be aligned with the complaint allegations or the information obtained during the investigation and are to be consistent with applicable regulations.

On November 17, 2011, the College signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The agreement requires that the College revise its disability services handbook to state that the provision of academic adjustments and auxiliary aids and services will be determined on a case-by-case basis and any list of potential academic adjustments or auxiliary aids will state that the list is not exhaustive. In addition, the College will develop and implement procedures that will ensure that students who require text and other written materials to be converted to an alternative format will be provided

alternative media materials that are equal in quality and, with appropriate notice from students, that are received at the same time as educational materials provided to students without disabilities. Finally, the College will revise its Section 504/Title II grievance procedures to ensure that they meet the minimum requirements of Section 504 and Title II.

OCR notes that, on November 22, 2011, the Complainant contacted OCR and asked that any remedies secured include tuition reimbursement for the Student. OCR did not determine this remedy to be appropriate for resolution of the complaint, as it would not align with nor be required by the information obtained to date in the investigation. OCR considers this complaint resolved by the agreement signed by the College on November 17, and we are closing the complaint 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 investigation of this complaint. We look forward to receiving the College's first monitoring report on or before February 1, 2012. Please address your monitoring report to Ms. Sarah Poppleton, who will be handling OCR's monitoring of this agreement. Ms. Poppleton can be reached at (216) 522-2674 or Sarah.Poppleton@ed.gov. If you have questions or concerns about this letter, you should contact Ms. Karla K. Ussery, Team Leader, by e-mail at Karla.Ussery@ed.gov, or by telephone at (216) 522-4970.

Sincerely,



Catherine D. Criswell
Director

Enclosure

RESOLUTION AGREEMENT
Mott Community College
OCR Docket Number 15-11-2074

Mott Community College (the College) submits this agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above-referenced complaint and to ensure compliance under Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), and the Americans with Disabilities Act Amendments Act of 2008 (ADAAA). The College is submitting this agreement voluntarily prior to OCR's completion of its investigation and prior to any compliance findings. Accordingly, the College agrees to the following:

Action Step I: Individualized Academic Adjustments and Auxiliary Aids and Services

By February 1, 2012, the College will revise its Disability Services Student Handbook so that it is consistent with the requirements of Section 504 and Title II and their implementing regulations at 34 C.F.R. §§ 104.4 and 104.44 and 28 C.F.R. §§ 35.130 and 35.160(a) and (b), respectively. The handbook will specifically state that the provision of academic adjustments and auxiliary aids and services will be determined on a case-by-case basis, and any list of potential academic adjustments or auxiliary aids and services will state that the list is not exhaustive.

Action Step II: Provision of Alternate Format Text Materials

The College will develop and implement procedures that will ensure that students who require text and other written materials to be converted to an alternative format will be provided alternative media materials that are equal in quality and, with appropriate notice from students, that are received at the same time as educational materials provided to students without disabilities. In formulating these procedures, the College will take into account the following:

- a) require the College to monitor and track the progress of text conversion jobs so that the appropriate College employees are accountable for meeting timelines for finishing jobs and also so that additional resources can be assigned as needed to meet established schedules;
- b) include a notification provision where students who request conversion of written materials will receive progress reports concerning their text conversion requests;
- c) include a notification provision to students of approximate length of time to convert written materials and that ordering materials as soon as possible will avoid unnecessary delays; and
- d) include a notification provision to students that late requests for alternative text materials and/or registering late for classes could impact the ability of the College to convert text materials prior to classes starting and/or being assigned a reading assignment.

Action Step III: Revisions to Disability Grievance Procedure

By February 1, 2012, the College will revise and submit to OCR for review and approval its Section 504/Title II grievance procedure to ensure that it provides, at a minimum:

1. notice to students and employees of the procedure, including where complaints may be filed and how they may be filed;
2. clarification that all complaints of alleged disability discrimination, including disability harassment, carried out by employees, other students, or third parties may be filed under the College's Section 504/Title II grievance procedure;
3. notice of the address and telephone number of the College employee with whom complaints should be filed and notice of an alternate person if the person with whom the complaint is filed is alleged to have been involved in the discrimination/harassment;
4. adequate, reliable, and impartial investigation of complaints, including the opportunity to identify witnesses and other evidence;
5. designated and reasonably prompt timeframes for the major stages of the complaint process, including timeframes for: (1) when the College will conduct a full investigation of the complaint; (2) when both parties receive a response regarding the outcome of the complaint; and (3) when the parties may file an appeal, if applicable;
6. established timeframes to complete the investigation process will take into consideration that extenuating circumstances may prevent compliance.
7. involvement of the College's Section 504 Coordinator in the College's investigation of grievances, to ensure the College's adherence to the requirements of Section 504 and its implementing regulation;
8. assurance that the College will take steps to prevent recurrence of any discrimination and to correct discriminatory effects on the complainant and others, if appropriate;
9. written notice to the parties of the outcome of the complaint;
10. maintenance of documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings;
11. clarification that any informal resolution process (i.e. first speaking with the Director of Disability Services before filing a written complaint with the ADA Compliance Officer) is voluntary and that 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; and
12. clarification that OCR is not part of the appeal process in the College's grievance procedure and that a complaint may be filed with OCR at any time.

REPORTING REQUIREMENTS: By February 1, 2012, the College will submit to OCR for review and approval copies of the revised handbook and procedures revised pursuant to Action Steps I, II, and III, above.

Action Step IV: Publication Requirements

Within 60 calendar days of receipt of the OCR-approved revised handbook and procedures, the College will adopt the procedures and handbook (an insert may be used until the student handbook is republished), publish them on its website, and notify students and staff of the procedures and handbook revisions and of where copies may be obtained by means reasonably calculated to reach relevant parties, such as by sending an e-mail message or letter to students, including a notice in newsletters, reviewing the information at staff meetings, and/or similar effective means.

REPORTING REQUIREMENT: Within sixty calendar days of receipt of receipt of the OCR-approved revised handbook and procedures, the College will submit documentation to OCR documenting its implementation of Action Step IV.

Action Step V: Training Requirements

Within 60 calendar days of receipt of the OCR-approved revised handbook and procedures, the College will provide training on the revised handbook and procedures to its administrative staff, the College's Section 504 Coordinator, and any staff involved in the determination of academic adjustments. The person providing the training must be a competent authority on Section 504 and Title II, as well as the ADA/AA.

REPORTING REQUIREMENT: Within 60 calendar days of receipt of the OCR-approved revised handbook and procedures, the College will submit to OCR documentation showing implementation of Action Step V, including the date when the training was held; the location where the training was held; the name, title, and qualifications of the individual who conducted the training; a copy of a sign-in sheet for attendees that lists the name and title of each attendee; a copy of the training agenda; and a copy of any training materials distributed during the training.

General Requirements

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the recipient has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.7(b) and 104.44, and Title II and its implementing regulation at 28 C.F.R. §§ 35.107(b), 35.130(b)(7), and 35.160, which were at issue in this case.

The College 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 this agreement. Further, the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.7(b) and 104.44, and Title II and its implementing regulation at 28 C.F.R. §§ 35.107(b), 35.130(b)(7), and 35.160.

Alvan Allen
President, or Designee

11-17-11
Date

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
400 ... RICK AVE ... SUITE 77
... DELAWARE ... 4-2111

MAR 07 2012

MAR 07 2012

Megan Norris, Esq.
Miller, Carfield, Paddock, and Stone, P.L.C.
150 West Jefferson, Suite 2500
Detroit, Michigan 48226

Re: OCR Docket #15-12-2009

Dear Ms. Norris:

On October 28, 2011, the U.S. Department of Education (the Department), Office for Civil Rights (OCR), received a complaint filed against Central Michigan University (the University), alleging discrimination against a student (Student) on the basis of disability (hearing impairment). Specifically, the complaint alleged that the University refused the Student's request for an auxiliary aid (interpreter services) that is necessary for her to participate in its academic program. The complaint also alleged that the University refused to modify its academic requirements as necessary to ensure that such requirements did not have the effect of discriminating on the basis of disability by threatening to fail the Student if she utilized a sign language interpreter in her [redacted]

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. 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, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public university, the University is subject to these laws. Based on the complaint allegations, OCR opened an investigation into the following legal issues:

1. whether the University was excluding a qualified 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;
2. whether the University had taken such steps necessary to ensure that a qualified student with a disability was not excluded from participation in the University's program because of the absence of auxiliary aids as required by Section 504's implementing regulation at 34 C.F.R. § 104.44(d);
3. whether the University 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);
4. whether the University 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); and
5. whether the University 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).

OCR began to investigate this complaint by reviewing documents submitted by the Student and the University and by interviewing the Student. Prior to the completion of this investigation, however, the University asked to resolve the complaint allegations pursuant to Section 302 of OCR's Case Processing Manual.

Summary of Investigation to Date

The Student is deaf and is enrolled in the Teacher Education Program at the University. She was scheduled to do student teaching required by the Program during the spring term of [redacted] in the fall of [redacted], prior to starting her student teaching, the Student asked to have interpreter services for the student teaching experience and met on several occasions with staff in the University's Student Disability Services office (SDS). According to the Complainant, SDS staff and the director of student teaching told her that, although she had a right to an interpreter, if she used an interpreter, she might not pass her student teaching requirement.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

On November [redacted] the University required the Student to sign a form, entitled "Student Teaching Action Plan for Student Teaching." The form states that during student teaching the expected outcome for all teachers earning certification through the state of Michigan is independent teaching and good classroom management. The form further states that, although a candidate has the right to request an interpreter for all of their student teaching, the presence of an interpreter does not indicate the ability to independently demonstrate the necessary technical standards. The form states that "[i]f a teacher education candidate cannot independently demonstrate the above standards, [the University] in compliance with the Michigan Department of Education (MDE) cannot recommend the student for a Michigan Provisional Teaching Certificate." The form then indicates that the University would provide the Student with interpreter services for full days during the first two weeks of the term, half days during the following two weeks of the term, and then no interpreter services for the remainder of student teaching except for large group presentations outside of the classroom, school assemblies, or professional development days.

When the Student began student teaching, the University provided an interpreter as stated in the action plan. However, after the second week of student teaching, the Student notified OCR staff that the University started using an agency to provide interpreter services and that, as the interpreters provided were inconsistent, she did not know who was going to provide her services on any given day. The Student stated that this inconsistency was disruptive, because the new interpreters did not know the names of the students or the routines of the classroom, and, each time there was a new interpreter, the Student had to explain everything anew. The Student provided correspondence between her host teacher and the director of SDS reflecting that, when the Student raised a concern about frequently having new interpreters and about the disruption this created, the University did not change the method by which it provided interpreters. A meeting was held with the Student, her host teacher, and the University regarding her concerns, but the Student told OCR that the meeting had not satisfactorily resolved the issues.

(b)(6); (b)(7)
(C)

The University provided OCR a letter dated [redacted] 2011, responding to the complaint allegations. The University asserted that it had not discriminated against the Student and had not refused to accommodate the Student's disability. The University asserted that its technical standards for student teaching incorporate MDE's "General Standards" required of candidates seeking state certification for elementary or secondary school teachers. The University asserted that staff members spoke with "specific individuals" at MDE who indicated that there are no hearing impaired or deaf individuals currently teaching in a standard K-8 classroom due to inability to meet MDE's General Standards.

Because the University asserted that the Student would be unable to meet MDE's General Requirements if she were to use an interpreter, on January 27, 2012, OCR opened a complaint for investigation against the MDE as a necessary party for resolution of this complaint. On February 13, 2012, OCR received MDE's response, stating that the "MDE does not have an official position regarding a candidate's use of interpreters during student teaching and the impact of such use on that candidate's recommendation for teacher certification."

On February 29, 2012, prior to the completion of OCR's investigation, the University indicated to OCR that it would like to resolve this complaint.

Applicable Legal Standards

The Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(ii) and the Title II regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit recipients and public entities, respectively, 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 such as the University 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). Title II also requires, at 28 C.F.R. § 35.160(a), that public entities take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others.

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. Section 104.44(d)(2) goes on to explain that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students. The Title II regulation, at 28 C.F.R. § 35.160(b), requires that a public entity furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation states that 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; and that, 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.

For OCR to find that a postsecondary institution discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services, 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. With appropriate notice to students, postsecondary institutions such as the University may require students with disabilities to follow reasonable procedures to request academic adjustments.

Under Section 504 and Title II, a recipient may not utilize criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. 34 C.F.R. § 104.4(b)(4) and 28 C.F.R. § 35.130(b)(3). A public entity also may not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity, unless such criteria can be shown to be necessary for the provision of the service, program, or activity being offered. 28 CFR 35.130(b)(3).

Although recipients are obligated to provide effective and appropriate academic adjustments, the regulations do not require postsecondary institutions to modify academic requirements that the recipient can demonstrate are essential to the instruction being pursued. While OCR gives great deference to an institution's academic decision-making with respect to these decisions, in order to receive this deference, the decision must have been made through a diligent, well-reasoned, collaborative process, including a thoughtful review of the academic program and its requirements and consideration of possible alternatives to the requested adjustment.

Voluntary Resolution

As noted above, before OCR completed its investigation, the University asked to resolve this complaint voluntarily pursuant to Section 302 of OCR's Case Processing Manual, which 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 recipient institution, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. The provisions of the resolution agreement are to be aligned with the complaint allegations or the information obtained during the investigation and are to be consistent with applicable regulations.

On March 2, 2012, the University signed the enclosed resolution agreement, which, once implemented, will fully address the complaint allegations in accordance with Section 504 and Title II. The agreement requires that the University evaluate every applicant and student, including applicants and students with disabilities, on a case-by-case basis to determine whether the applicant or student meets the essential requirements for admission into or successful completion of a University program. The agreement requires the University to provide students with disabilities auxiliary aids and services as well as modifications to academic requirements as necessary to ensure equal educational opportunity. Further, the University may not forbid students with disabilities from using an aid or service that is required by law if that prohibition limits their participation in the school program, or require students to waive their right to an aid or service in order to participate in the program. The agreement also requires the University to measure a student's achievements and not the extent of the student's disability.

In addition, the agreement requires the University to notify the Student, by written correspondence, that she will be eligible for her Elementary Michigan Provisional Certification upon her successful completion of her student teaching and that the use of an interpreter in the classroom for the student teaching experience will not exclude her from being eligible to apply for her Elementary Michigan Provisional teaching license. Further, the University will notify the Student that it will not penalize her for her use of interpreter services in evaluating her performance in student teaching. The University will also ensure that the Student receives interpreter services for student teaching from a consistent team of the same qualified interpreters with no gaps in service.

OCR considers this complaint resolved by the agreement signed by the University on March 2, and we are closing the complaint as of the date of this letter. OCR will, however, monitor the University's implementation of the agreement. Should the University fail to fully implement the agreement, OCR will reopen the case and resume its investigation of the complaint allegations. Ms. Ann Millette, Senior Attorney, will be monitoring the University's implementation of the agreement. Please send monitoring reports to her attention. She can be reached at (216) 522-2679 or Ann.Millette@ed.gov.

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 look forward to receiving the University's first monitoring report under the agreement by March 30, 2012. If you have questions or concerns about this letter, you should contact Ms. Karla K. Ussery, Team Leader, by e-mail at Karla.Ussery@ed.gov or by telephone at (216) 522-2683.

Sincerely,

A handwritten signature in cursive script that reads "Catherine D. Criswell".

Catherine D. Criswell
Director

Enclosure

**Resolution Agreement
Central Michigan University
OCR Docket Number 154 15-2009**

Central Michigan University (the University) submits the following agreement to the U.S. Department of Education, Office for Civil Rights (OCR), to resolve the above- referenced complaint and to ensure the University's compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. This Agreement does not represent any finding that the University has violated Section 504 or Title II or any other law in any way, and the University makes no admission that it has violated the law, that it has failed to accommodate the student, or that the remedies provided pursuant to this Agreement are legally required. With this understanding, the University agrees to take the following actions:

Individual Remedies

- (b)(6); (b)(7)
(C)
1. On [REDACTED] 2012, the University notified the Student, by written correspondence, that the Student will be eligible for her Elementary Michigan Provisional Certification upon her successful completion of her student teaching, and that the use of an interpreter in the classroom for the student teaching experience will not exclude her from being eligible to apply for her Elementary Michigan Provisional teaching license. The University will further notify the Student, by written correspondence, that the University will not penalize her for her use of interpreter services in evaluating her performance in student teaching.
 2. The University will ensure that the Student continues to receive interpreter services for student teaching from a consistent team of qualified interpreters, with one designated substitute, and will ensure that the interpreters are available at all times when the Student is student teaching, with no gaps in service. If the University continues to provide the interpreter service through an outside agency, it will notify the agency of the requirements in this paragraph.
 3. If the University continues to provide interpreter services through an agency, the University will monitor the agency's provision of services on a regular basis to ensure that the services provided are effective and consistent with the requirements in Item 2 above.

REPORTING REQUIREMENTS: By March 30, 2012, the University will submit to OCR documentation verifying its implementation of Items 1-3 above, including: copies of the letters issued to the Student and the agency providing interpreter services, or, alternatively, documentation to show that the University is otherwise providing interpreter services in the manner described in Item 2; and, if applicable, documentation verifying its regular monitoring of the agency-provided interpreter services in accordance with Item 3. By April 30, 2012, the University will submit documentation to OCR verifying its continued implementation of Item 3 above, including monitoring letters or reports to and from the agency through the date that the

Student concludes her student teaching.

University-Wide Remedies

4. By March 30, 2012, the University will submit to OCR for review its Section 504 and Title II policies and procedures to ensure that they comply with the regulations implementing Section 504 and Title II. Specifically, the materials will require the University to at a minimum:
 - a. evaluate every applicant and student, including applicants and students with disabilities, on a case-by-case basis to determine whether the applicant or student meets the essential requirements for admission into or successful completion of a University program, and specify in the policies and procedures that the University will not categorically deny entry into University programs based on disability;
 - b. work with students who have disabilities in an interactive process to identify appropriate academic adjustments and services;
 - c. recognize that academic adjustments may include auxiliary aids and services, as well as modifications to academic requirements as necessary to ensure equal educational opportunity;
 - d. 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;
 - e. furnish appropriate auxiliary services, where required by law, to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity, including the following:
 - (i) In determining what types of auxiliary aids and services are necessary, the University will give consideration to the requests of individuals with disabilities.
 - (ii) Auxiliary aids and services will be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual with a disability.
 - f. confirm that the University will not forbid a student with a disability to use an academic adjustment, where required by law, including an aid or service, if that prohibition limits the student's participation in a University program, or require the student to waive his or her right to an academic adjustment, such as an aid or service, in order to participate in the program;

- g. analyze the appropriateness of an aid or service in its specific context;
 - h. confirm that the University has an obligation, ultimately, to measure a student's achievements and not the extent of the disability, and
 - i. confirm that the University prohibits retaliation against persons who make complaints or assert rights under Section 504 or Title II.
5. Within 60 calendar days after notification of OCR's approval of the University's policies and procedures, the University will notify students and University staff of the policies and procedures and publish the policies and procedures on the University's website and notify students and staff- how to obtain hard copies of the policies and procedures. The University may meet this requirement with respect to its printed materials in any interim period before such materials are regularly scheduled to be reprinted, by including appropriate inserts in the existing materials.
6. Within 60 calendar days after notification of OCR's approval of the University's policies and procedures, the University will provide training by a competent authority on Section 504 and Title II to all University staff responsible for addressing issues regarding academic adjustments and auxiliary aids and services for students with disabilities pursuant to Section 504 and Title II. The training will focus on the University's responsibilities identified in Item 4 above and the policies and procedures.

REPORTING REQUIREMENTS: By March 30, 2012, the University will submit to OCR a copy of its draft revised Section 504 policies and procedures. OCR will review the submission and provide technical assistance, as needed, to ensure that the policies and procedures comply with the requirements of Section 504 and Title II. Within 60 calendar days after notification of OCR's approval of the University's policies and procedures, the University will submit to OCR information documenting its implementation of Items 5 and 6, including copies of the notices issued to students and staff, a description of the training presenter's qualifications, the agenda covered during the training, any materials provided during the training, and the sign-in lists for each session.

General Requirements

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4 and 104.44, and Title II and its implementing regulation at 28 C.F.R. §§ 35.130 and 35.160, which were at issue in this case.

The University 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 this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or

data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.4 and 104.44, and Title II and its implementing regulation at 28 C.F.R. §§35.130 and 35.160.

CENTRAL MICHIGAN UNIVERSITY



By: Manuel R. Rupe
Its: General Counsel

3-7-2017
Date



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

500 SUPERIOR AVE. EAST, SUITE 750
CLEVELAND, OH 44114-2611

REGION XV
MICHIGAN
OHIO

FEB 24 2012

Paul W. Coughenour, Esq.
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, Michigan 48226

Re: OCR Docket # 15-10-2027

Dear Mr. Coughenour:

This letter is to advise you of the disposition of the above-referenced complaint filed with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), on December 30, [REDACTED] against Macomb Community College (the College). The complaint alleged that the College discriminated against a student (the Student) on the basis of disability. Specifically, the complaint alleged that during the [REDACTED] spring/summer term the Student was required to take weekly quizzes for his [REDACTED] class in a hard-copy format in the College's Learning Center while the other students in the course were allowed to take the quiz online, from any location, during the same 48-hour period that the Student was allotted. Because the Learning Center's hours and location were inconvenient for the Student, he was forced to withdraw from the class. The complaint also alleged that, when the Student filed a disability discrimination complaint with the College about this matter, the College failed to provide him with an appropriate grievance procedure.

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 on the basis of disability by recipients of Federal financial assistance from the Department. 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. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws. Accordingly, OCR has jurisdiction over this complaint.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(b)(6); (b)(7)
(C)

Based on the complaint allegations, OCR investigated the following issues: whether the College discriminated against a qualified student with a disability in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.4(a), (b) and 104.44 by failing to make a modification to an academic requirement necessary to ensure that the requirement did not discriminate on the basis of disability and by failing to provide the student with an equal opportunity to participate in its program and a service that was as effective as that offered to students without disabilities (see also Title II's implementing regulation at 28 C.F.R. § 35.130); and whether the College failed to 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 or Title II, as required by 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107.

During the investigation, OCR reviewed documentation from the Student and the College. OCR also interviewed the Student and relevant College personnel and provided the Student an opportunity to respond to the information provided by the College. Based on a careful review of this information, OCR found sufficient evidence to conclude that the College discriminated against the Student on the basis of disability and that the College failed to provide the Student with an appropriate grievance procedure. We set forth the bases for this determination below.

Summary of OCR's Investigation

Generally, OCR does not conduct its own investigation of allegations that have already been filed and investigated through an entity's internal grievance process. Instead, OCR reviews the other entity's investigation and resolution of the grievance and determines whether those meet OCR's regulatory standards, *i.e.*, all allegations were investigated, appropriate legal standards were applied, and any remedies secured meet OCR's standards. In this case, the Student submitted documentation supporting that the College applied incorrect legal standards during its resolution of his complaint. We therefore opened an investigation.

The Student informed OCR, and the College does not dispute, that the College agreed to provide the Student disability-related services, including extra time on tests. The Student began classes for the College's [redacted] course on May [redacted] [redacted] was an online class, and the instructor administered quizzes about once per week. [redacted]

The College permitted other students to take course quizzes online, at any time and from any location during specified 48-hour time periods. Because the Student needed extra time on the quizzes, which would have exceeded timeframes permitted by the course assessment software, the College granted the Student extra time for quizzes. However, the College required him to take the quizzes on campus in the Learning Center during the same 48-hour time period as the other students. He indicated that the Learning Center is not open 24 hours per day and that he did not live on campus, but instead lived approximately 11-12 miles from campus, a distance that was about a 20-22 minute drive. As a result of his inability to take the quizzes under the same circumstances and with the same conveniences as other students, the Student dropped Math [redacted] and refused to pay the full amount of fees charged by the College for the course. [redacted]

(b)(6); (b)(7)
(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

The Student filed a complaint with the College raising the same allegation raised in this OCR complaint. The College issued a no violation finding on November [redacted]. The finding stated that the Student had been given an accommodation (extra time taking the quizzes in the Learning Center) that:

(b)(6); (b)(7)
(C)

was reasonable based upon all the circumstances. [The Student] provided no evidence that [his] disability precluded [him] from taking [his] exam on ground at the Learning Center instead of online as [he] requested. The law does not give [him] the right to choose [his] accommodations. The law simply requires that the accommodations be reasonable.

The Student disagreed with the College's finding and filed his OCR complaint within 60 days of the College's determination, making his complaint with OCR timely filed.

With one exception, the College does not dispute that it required the Student to come into the Learning Center on campus and take the quizzes in a hard-copy format during the same 48-hour period during which other students could take the test online, at any time, from any location with internet access. The exception stated by the College was that, because the Learning Center was not open on Sundays, the Student was granted an additional day for any quizzes open on a Sunday. The Learning Center is located on the College's main campus. The College asserted that during the [redacted] spring/summer session the Learning Center's hours were Monday-Friday 8:00 a.m.-8:45 p.m. and Saturday from 10:00 a.m. to 2:34 p.m.

(b)(6); (b)(7)
(C)

Documents submitted by the College show that the Student contacted the College's Special Services department on June [redacted] and asked for "Classroom Assistance Letters" for both courses he was taking that term [redacted]. The "Counselor's Notepad" entry completed by a Special Services counselor stated that the letters were provided. The College confirmed to OCR, in a June [redacted] letter from you, that the Student was approved for extended testing time and testing in a reduced-distraction environment for those two courses. The College did not provide copies of the Classroom Assistance Letters for the spring/summer [redacted] term, but did provide copies of the Student's Classroom Assistance Letters from the winter [redacted] term. The letters were form letters, with an "x" placed next to [redacted] for why the Student needed assistance. Under the accommodations section of the form, the following were checked: "Untimed testing, instructor submits test in advance to the Learning Center" and "Testing in a reduced-distraction environment in the Learning Center."

(b)(6); (b)(7)
(C)

[redacted] was an entirely online class, including weekly online quizzes. Students were required to "attend" at least five different days per seminar, each seminar lasted about one week, the class lasted for eight weeks (this was accelerated; a typical course lasted 16 weeks), and quizzes were given about once per week. A College official explained that the College uses a learning management system, ANGEL Learning (ANGEL), which is computer software accessed through the internet. ANGEL allows the College to host online or virtual classes, online or web-based supplemental coursework for College courses, documents, discussion forums, and other, similar online or virtual activities.

(b)(6); (b)(7)
(C)

The June [redacted] Counselor's Notepad entry states that the [redacted] professor contacted the counselor to ask how to provide extended test time for a virtual class. The counselor contacted the Learning Center and was told that the Student could take the test online at the Learning Center, once the professor contacted the Learning Center and set up the online test-taking software for extended test time support. A June [redacted]

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

Counselor's Notepad entry stated that the [redacted] professor had called saying that the Student could not take the course quizzes online in the Learning Center because the integrity of his quizzes could not be assured, and that if he were to provide the Student with separate quizzes in the online environment, it would take him "weeks" to create the eight quizzes. The entry ends with a note that the [redacted] professor asked if there were any other alternatives for the Student's extended test time.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

Information provided by the College supported that, in June [redacted] ANGEL did not allow for the quick creation of an untimed or extended time quiz for a quiz that was set up as timed. The professor estimated for OCR that it would have taken him at least 50 minutes to create each untimed quiz in ANGEL. Another option, not requiring the creation of separate quizzes, would have been for the Student to take the quiz after the 48-hour time period ended for the other students. This option was rejected because, for these quizzes, ANGEL was set up so that, once the assessment deadline ended for the rest of the class, the solutions to the problems were revealed and were available to all of the students. The College did not want to change this feature because of the belief that the other students would have objected because students typically want immediate feedback in fast-paced, online classes. As a result, the professor contacted Student Support Services and asked if there were any alternatives, besides his having to create quizzes for the Student in ANGEL, for the Student to receive his extended test time. The professor stated Student Support Services determined that the solution would be for him to create pencil-and-paper quizzes and turn them in to the Learning Center, and the Student would be able to take them there. The professor said that the hard-copy quizzes took him 10-15 minutes each to create. It took some additional time for him to deliver them to the Learning Center. The professor stated that he was unsure how the decision was made to have the Student take the quizzes in a hard-copy format in the Learning Center. He said that after he contacted Student Support Services they called him back and offered him this solution, and he agreed to it. The professor acknowledged that, if he had created the Student's quizzes in ANGEL, he could have used the same set-up for any other student who needed additional time for online quizzes.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

The College informed OCR that, as of the [redacted] academic year, the College upgraded from ANGEL version 7.2 to 7.4, and the new version incorporates features that were not possible with the version that was in place during the [redacted] spring/summer term. One of the upgrades is the capability to create untimed tests more easily. The [redacted] professor confirmed that the College's new version of ANGEL makes it much easier to create an untimed test from a timed test, that he has created separate, untimed tests for two or three students, and that it takes only a few minutes to create the untimed or extended time tests.

(b)(6); (b)(7)
(C)

(b)(6); (b)(7)
(C)

OCR's reviewed the College's "Civil Rights Complaint Procedure," which is utilized for civil rights complaints, including those under Section 504/Title II not involving harassment. The procedures identified the Dean of Student Success as the contact person for complaints against students. It also identified the College's Equal Opportunity Diversity Officer as the contact person for complaints against employees. The procedures provided the contact information for each person. The procedures stated that the contact person would "discuss the complaint with the complainant and conduct an investigation that is appropriate under the circumstances." The procedure then stated that the complainant would be provided with written notice of the outcome. The procedure did not include: a process for making complaints against a third party (ex. a visiting athlete or a contractor); adequate, reliable and impartial investigation of complaints, including the opportunity for parties to present witnesses and other evidence; reasonably prompt timeframes for the major stages of the complaint process; or assurance that the College will take steps to prevent recurrence of discrimination found to have occurred and correct its effects on the complainant and others, if appropriate.

The Dean of Student Success Services stated that the College's formal process/policy for addressing grievances is in a handbook on rights and responsibilities that is provided to, and discussed with, all students during orientation. The Dean stated that the policy is also on the College's website, in the course catalog and, she believed, on students' schedules. The Dean stated that, once she receives a complaint, she investigates what happened by talking to the complainant and any witnesses identified by the complainant, and otherwise gathering facts. The Dean said that at the conclusion of her investigation she sends a written response to the complainant in an e-mail and via regular mail.

(b)(6); (b)(7)
(C) Regarding the Student's October [redacted] grievance against the College, the Dean said that she met with the Student, provided him with a two- or three-hour time period to submit additional information, and then had conversations with the instructor, the information technology department, the online courses department, and the disability services office. As noted above, the College determined that the accommodation provided to the Student, of taking the quizzes in the Learning Center with extra time, was "reasonable" based upon all the circumstances and that the "law simply requires that the accommodations be reasonable."

Applicable Legal Standards and Analysis:

- Access to Online Quizzes

Section 504's implementing regulation requires recipient postsecondary institutions to make modifications to academic requirements necessary to ensure that the requirements do not discriminate on the basis of disability and that they provide students with disabilities an equal opportunity to participate in their programs. Section 504 also requires that such institutions provide services as effective as those offered to students without disabilities. 34 C.F.R. §§ 104.4(i), (b) and 104.44; *see also* Title II's implementing regulation at 28 C.F.R. § 35.130.

While a postsecondary institution need not provide a specific academic adjustment if it would fundamentally alter an essential academic requirement or lower academic standards, and need not provide the exact service a student requests, those provided must be effective. OCR gives deference to an institution's academic decision-making in determining whether a requested academic adjustment and/or modification would fundamentally alter an essential program requirement. 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.

Colleges are not required to provide the most sophisticated auxiliary aids available; however, the aids provided must effectively meet the needs of a student with a disability. An institution has flexibility in choosing the specific aid or service it provides to the student, as long as the aid or service selected is effective. These aids should be selected after consultation with the student who will use them. No academic adjustment, 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.

To determine if a program, service, or activity delivered online or through a website provides equal access to persons with disabilities, OCR considers such factors as whether persons with disabilities have the same ease of use, ready access, completeness of information, functionality, and timeliness of response.

In the instant case, the College provided students without disabilities with the opportunity to complete assessments online, from any location offering internet access, during any time within a 48-hour period. The College decided to provide its agreed-upon accommodation for the Student's disability -- extended time on quizzes and tests -- by having him take his quizzes on campus during the same 48-hour timeframe offered to other students, in the Learning Center, which was not open 24 hours per day, had limited hours on Saturdays, and was closed on Sundays (with the possible exception that, if the quiz fell on a Sunday, the Student was granted an extra day). Therefore, the Student's ability to take the quizzes and tests was limited compared to the availability of the quizzes and tests to other students in the course. In addition, the accommodation provided required the Student to travel from his home to campus, which was not required of students without disabilities in the course.

In order for OCR to grant deference to the College's determination regarding its chosen method of providing the Student's agreed-upon accommodation, the College would have needed to provide OCR with evidence that providing the Student an online assessment, or some other substantially equivalent assessment method, would fundamentally alter the nature of the assessment or pose an undue burden. The College did not provide such evidence in this case. The provision of the test in the online format was possible. The College would have been able to provide the Student the quizzes, with his accommodation of extended time, under the same circumstances as those offered to other students, if the professor had spent an estimated 50 minutes per quiz setting up the quiz in ANGEL, the College's online software. This was 35-40 minutes more than the professor spent creating the hard-copy quizzes, not including the time he spent delivering the

quizzes to the Learning Center. Requiring an employee to spend 35-40 extra minutes to create an accessible quiz that would have provided the Student's agreed-upon academic adjustment of extended time does not rise to the level of an undue burden, especially when the same format could have been used for similarly-situated students. Neither would the provision of the quizzes in the online format have altered the nature of the assessments because the assessments were designed to be taken online.

The academic adjustment provided to the Student did not offer the same ease of use or ready access to the Student, and thus did not provide him with an equal opportunity to participate in the College's program, in violation of 34 C.F.R. §§ 104.4(a), (b), 104.44 and 28 C.F.R. § 35.130.

- Grievance Procedure

Section 504 and Title II require covered institutions to have grievance procedures that incorporate appropriate due process standards and that ensure the prompt and equitable resolution of disability discrimination complaints. 34 C.F.R. § 104.7(b). *See also* 28 C.F.R. § 35.107(b). OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the procedures provide for:

- notice to students and employees of the procedure, including where complaints may be filed;
- application of the procedure to complaints alleging discrimination carried out by employees, other students, or third parties;
- adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence;
- designated and reasonably prompt timeframes for the major stages of the complaint process;
- notice to the parties of the outcome of the complaint; and
- an assurance that the school will take steps to prevent recurrence (of any harassment) and to correct discriminatory effects on the complainant and others, if appropriate.

While the College has a procedure for handling disability complaints, its "Civil Rights Complaint Procedure," as noted above, the procedure does not include: a process for making complaints against a third party; adequate, reliable and impartial investigation of complaints, including the opportunity for parties to present witnesses and other evidence; reasonably prompt timeframes for the major stages of the complaint process; or assurance that the College will take steps to prevent recurrence of discrimination found to have occurred and correct its effects on the complainant and others, if appropriate.

Moreover, in investigating the Student's grievance, the College used only a "reasonable accommodation" standard, without considering whether the Student was provided an equal opportunity to benefit from the online course or whether he was provided services that were as effective as those provided to students without disabilities.

The information obtained by OCR during this investigation therefore revealed that the College applied incorrect legal standards in its disposition of the Student's College complaint, and that it utilized a grievance procedure that lacked appropriate due process standards and did not provide for the prompt and equitable resolution of complaints, in violation of 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

Resolution and Conclusion

On November 17, 2011, OCR informed the College that OCR's investigation was complete and that OCR had determined that a preponderance of the evidence supported a conclusion that the College failed to comply with applicable regulations; therefore, a proposed resolution agreement was sent to the College. The agreement would have required the College to reimburse the Student for the cost of the course and any required textbooks/materials and to remove any holds on the Student's account that were related to the course. The agreement also would have required the College to write a letter to any entity taking any collection action regarding the Student's tuition for the course advising the entity of the resolution of the issue, and notify the nation's three largest credit reporting agencies that this debt was reported in error so that any negative reports resulting from the College's collection actions were removed. The agreement also would have required appropriate College staff to participate in a technical assistance discussion with OCR regarding academic adjustments for individuals with disabilities, the requirement that individuals with disabilities be provided an equal opportunity to participate in the College's programs, and the application of these concepts to online courses. Lastly, the agreement would have required the College to revise its disability grievance procedure, submit it to OCR for approval, and, after approval by OCR, publish its revised grievance procedure and provide a copy to the two staff members at the College who are responsible for receiving and investigating Section 504/Title II complaints.

The College and the Student subsequently provided OCR with information which indicated that the Student had been taking [redacted] courses during the relevant semester, for a total tuition of [redacted] or [redacted] per course. Upon registration for the [redacted] courses, he paid [redacted] (b)(6); (b)(7) (b)(6); (b)(7) (C) [redacted] that was due. He dropped [redacted] (b)(6); (b)(7) (C) [redacted] courses, but not within the College's (b)(6); (b)(7) (C) [redacted] specified timeframe for reimbursement; therefore, the Student still owed the College (b)(6); (b)(7) (C) [redacted]. However, (b)(6); (b)(7) (C) [redacted] was not related to this complaint. As he did not pay the [redacted] (b)(6); (b)(7) (C) [redacted] after dropping the courses, the College had placed a hold on the Student's account, and turned the [redacted] (b)(6); (b)(7) (C) [redacted] debt over to a collection agency. On [redacted] (b)(6); (b)(7) (C) [redacted] 2011, the College submitted to OCR a copy of a letter dated (b)(6); (b)(7) (C) [redacted] December [redacted] (b)(6); (b)(7) (C) [redacted] sent from the College's Director of Finance & Investments to the Student stating that the [redacted] (b)(6); (b)(7) (C) [redacted] had been cleared from his account, and that the College would reimburse him for any amounts he paid for required texts or other materials for the

online course, provided he submit proof of payment to the College no later than 30 days from the date of the letter. The letter also stated that the College directed the collection agency to permanently terminate all collection activity and that the collection agency confirmed to the College that it has, in fact, closed its file on the Student's account, without having reported the debt to the credit bureaus. Finally, the letter stated that the hold placed on the Student's account had been released. Included with the letter was an e-mail from the (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C), which stated that the account was permanently closed, and that the delinquency was not reported to any of the three major credit reporting agencies. The College also provided OCR with two other documents, both showing the balance due from the Student is now \$0.00 -- an "Itemized Statement of Tuition of Fees" and a "Student Class Schedule and Registration Statement." On January 12, 2012, the Student confirmed to OCR that he had provided the College with proof of payment for his textbook costs and the College reimbursed him. On January 18, 2012, the College provided OCR with proof of reimbursement to the Student in the amount of [redacted] for his textbook costs.

(b)(6); (b)(7)(C)

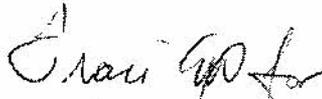
The College also revised its grievance procedure, which is available on the College's website. OCR reviewed the revised procedure online on January 18, 2012, and found that it complies with Section 504 and Title II requirements. On January 31, 2012, you sent OCR a letter confirming that you will conduct training on relevant Section 504 and Title II requirements for College staff responsible for determining academic adjustments and auxiliary aids and services for persons with disabilities, as well as any staff responsible for investigating or making determinations concerning disability-related grievances and complaints. The training will cover academic adjustments for individuals with disabilities, the requirement that individuals with disabilities be provided an equal opportunity to participate in the College's programs, and the application of these concepts to online courses. The College's letter stated that the training will be provided no later than March 30, 2012, and that, once the training has been provided, the College will send OCR documentation regarding the training that was done, including a sign-in sheet with a caption denoting the training topic, the date of the training, the times it was scheduled to start and stop, and a copy of any Power Point or other materials used in the training.

In light of the foregoing, the College's actions taken with regard to the Student's account and the grievance procedure, along with the training it has indicated it will provide, will resolve the compliance issues in this complaint. OCR will monitor the College's implementation of the training and, if the College does not fully implement its commitment, OCR will reopen the complaint and take appropriate action to ensure the College's compliance with Section 504 and Title II. Ms. Kelly McHargh, Senior Attorney, will be coordinating OCR's monitoring of the College's implementation of the commitment. Ms. McHargh can be reached at (216) 522-2675 or Kelly.McHargh@ed.gov. Please submit the College's report verifying the training through the documentation described above to Ms. McHargh's attention by April 15, 2012.

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.

Thank you for your cooperation during the resolution of this complaint. Should you have any questions about this letter, please contact Mr. Donald S. Yarab, Team Leader, by telephone at (216) 522-7634 or at Donald.Yarab@ed.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Criswell" followed by a flourish.

Catherine D. Criswell
Director



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS – DISTRICT OF COLUMBIA OFFICE

October 13, 2011

Dr. John J. DeGioia
Office of the President
Georgetown University
204 Healy Hall
37th & "O" Streets, NW
Washington, DC 20057-1789

Re: OCR Complaint No. 11-11-2044
Resolution Letter

Dear Dr. DeGioia:

This letter is to notify you that the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), has completed its investigation of the complaint filed on January 10, 2011 against Georgetown University (the University). The Complainants allege that the University discriminated against their daughter (the Student) on the basis of disability. Specifically, they allege that (b)(7)(C) (b)(7)(C) the University discriminated against the Student based on her disability when it subjected her to certain conditions as a requirement for reenrollment following a medical leave of absence.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive federal financial assistance (FFA) from the Department. The University is a recipient of FFA from the Department and therefore, is subject to the provisions of Section 504. The Section 504 regulation, at 34 C.F.R. § 104.43, requires that a college or university may not, on the basis of disability, exclude students from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any of its programs or services.

During the course of OCR's investigation, the University expressed an interest in resolving the complaint under Section 302 of OCR's Case Processing Manual, which provides that a complaint may be resolved at any time when, before the conclusion of an investigation, the recipient expresses an interest in resolving the complaint. On October 7, 2011, the University entered into a voluntary resolution agreement (the Agreement) with OCR to resolve the complaint. The provisions of the Agreement are aligned with the allegation raised by the Complainants and information obtained during the course of OCR's investigation, and consistent

400 MARYLAND AVENUE, S.W., Washington DC 20202-1475
Telephone (202) 453-6020 Facsimile (202) 453-6021 TDD 1-877-521-2172
E-mail OCR.DC@ed.gov Website www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

with the applicable regulations. When fully implemented, the Agreement will resolve the complaint.

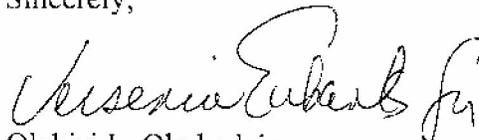
This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. We have advised the Complainants that the University may not harass, coerce, intimidate, or discriminate against them because she filed a complaint or participated in the complaint resolution process. If this happens, they may file another complaint alleging such treatment.

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.

Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We appreciate the cooperation of the University, particularly Rosemary Kilkenny, Lauralyn Beattie, and Adam Adler. If you have any questions, feel free to contact Sebastian Amar at 202-453-6023 or at Sebastian.Amar@cd.gov or Kay Bhagat at 202-453-6598 or at Kay.Bhagat@ed.gov.

Sincerely,



Olabisi L. Okubadejo
Team Leader
District of Columbia Office
Office for Civil Rights

cc: Rosemary Kilkenny, Esq.
Lauralyn Beattie, Esq.
Adam Adler, Esq.

**Voluntary Resolution Agreement
Georgetown University
OCR Complaint No. 11-11-2044**

Georgetown University (the University) agrees to fully implement this voluntary resolution agreement (Agreement) to resolve Office for Civil Rights (OCR) Complaint No. 11-11-2044. Prior to the completion of OCR's investigation, the University expressed an interest in resolving this complaint pursuant to Section 302 of OCR's Case Processing Manual and voluntarily agrees to take the following actions:

1. The University will revise its policies and procedures for students to take a voluntary Medical Leave of Absence (MLOA) to ensure that they comply with Section 504 and its implementing regulation. The revised policies and procedures will provide for an individualized process for assessing a student's eligibility to take an MLOA and return from an MLOA. Under the revised policies and procedures, any conditions that the University may impose upon a student's return from an MLOA must be reasonable, individualized, and give significant weight to documentation of the opinion of the student's treatment provider regarding the student's ability to function academically at the University with or without accommodations. At a minimum, the revised policies and procedures will:
 - a. Include prompt and reasonable timeframes within which the University will complete its review and final determination of students' requests to take and return from an MLOA;
 - b. Notify students of the University's process for reviewing the students' requests to take and return from an MLOA, which, will:
 - i. Explain that students are typically required to provide medical documentation from their individual treatment providers;
 - ii. Describe how the University will consider medical documentation provided;
 - iii. List criteria and/or provide examples that the University will rely upon in making any determinations that a student provided insufficient documentation, including those for when the University will contact the student's treatment provider and those for the extraordinary circumstances in which an additional assessment by CAPS or a mutually agreeable independent clinician will be required. The policies/procedures will clarify that the University will document this determination and share the determination and rationale with the individual student; and
 - iv. Identify whether a student will be required to participate in a "check-in" conversation with University personnel to discuss transition back to University life and explain the purpose of this "check-in" conversation;
 - c. Ensure that students are not required to engage in employment or volunteer positions or to submit letters of recommendation from an employer as a condition for return;
 - d. Ensure that students are not required to demonstrate a decrease in or amelioration of their disability-related behavior or symptoms, but allow the University to

- require students to demonstrate their readiness to resume studies and be a successful member of the campus community, with or without accommodations;
- e. Outline the differences between an MLOA and a Personal Leave of Absence (PLOA) to allow students to select their preferred LOA; and
 - f. Notify students that the MLOA is a voluntary process.

Reporting Requirement: By November 15, 2011, the University will provide to OCR a draft of its revised MLOA policies and procedures. Within 14 calendar days of OCR's approval of the revised policies and procedures, the University will adopt and widely disseminate the revised procedures.

Reporting Requirement: Within 14 calendar days of the University's adoption and dissemination of the revised procedures, the University will provide OCR with documentation that the revised policies and procedures were adopted and widely disseminated to University personnel, students, and any other relevant individuals in the University community.

2. Within 30 calendar days of the adoption and dissemination of the revised procedures, the University will provide training on its revised MLOA policies and procedures to all University personnel involved with advising students about an MLOA and reviewing requests to take and return from an MLOA.

Reporting Requirement: Within 7 calendar days of the date of the training, the University will provide OCR with documentation of its completion of this item, including copies of all training materials provided, the topic(s)/information covered during the training, the name(s)/title(s) of the individual(s) who provided the training, and documentation of the names and titles of the University personnel who attended the training.

3. Within 14 calendar days of receiving any request from the Student with supporting documentation, as required in the revised MLOA policies and procedures, during the 2011-2012 and/or 2012-2013 academic years to return from the MLOA she took beginning in January 2011, the University will review the Student's request and determine whether or when she may return to the University, as well as any reasonable and individualized conditions for her return.

Reporting Requirement: Within 7 calendar days of completing the review of (b)(7)(C) the Student's request to return, the University will provide to OCR documentation of its review of the Student's request to return to the University, including (a) the information the University reviewed; (b) its determination about whether the Student may return; and (c) if applicable, any proposed reasonable and individualized conditions for the Student's return to the University. Within 7 calendar days of OCR's approval of the University's review and any conditions, the University will notify the Student of its determination with regard to her request and any approved conditions. Within 7 calendar days of notifying the Student of its determination, the University will provide documentation to OCR of the notification it gave to the Student. ✓

Within 45 calendar days of the University's adoption of revised MLOA procedures,

- 4. ~~By January 6, 2012,~~ the University will review all situations where a student's request to take an MLOA was denied and/or where a student's request to return to the University from an MLOA was denied or delayed during the 2010-2011 academic year. For each situation, the University will (a) determine if the denial decision, the conditions for the student to be placed on the MLOA, and/or the conditions for return are consistent with its revised MLOA policies and procedures, as discussed in Provision 1, and (b) if the denial decision or conditions would be different under the revised MLOA policies and procedures, the University will determine whether individual relief is appropriate for any of the students and offer appropriate remedies to the students.

Reporting Requirement: *Within 7 calendar days of completing the review,* ~~By January 13, 2012,~~ the University will provide to OCR documentation of its review of previous situations of students whose requests to take or return to the University from MLOAs were denied or delayed, including (a) the information it reviewed; (b) its determination about whether its denial decision or the conditions for placement on and/or return from an MLOA would be different under the new MLOA policies and procedures; (c) its determination about whether individual relief is appropriate for each student; and (d) if applicable, any proposed remedies as a result of its review for OCR's approval. Within 7 calendar days of OCR's approval of the University's review and proposed remedies, the University will offer any approved remedies to students as appropriate.

Reporting Requirement: If applicable, within 7 calendar days of the University providing any remedies to students, the University will provide to OCR documentation that it provided any approved remedies to students who accepted the remedies, as identified above.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104, which was at issue in this case. The University 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 this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104, which was at issue in this case.


 University President or designee
 Georgetown University

3.5.7, 2011
 Date

Voluntary Medical Leave of Absence (MLOA) Policy

In Effect as of May 9, 2012

Introduction

The University recognizes that students may experience medical situations that significantly limit their ability to function successfully or safely in their role as students. In those situations, students should consider requesting a medical leave of absence (MLOA), which permits students to take a break from University life and their studies, so that they may receive treatment and later return to the University with an enhanced opportunity to achieve their academic and co-curricular goals.

Georgetown University has designed this policy to ensure that students are given the individualized attention, consideration and support needed to address medical issues that arise or escalate during their time at the University. This policy outlines a flexible and individualized process that students should follow to request a medical leave of absence to address their medical difficulties so that they can return to successfully matriculate at the University.

Note: Students may also be eligible to take other types of leave from their academic program. Undergraduate students should consult the Undergraduate Bulletin, available at <http://bulletin.georgetown.edu/regulations1.html>, and contact their academic Dean's office for more information. Graduate students should consult the Graduate Bulletin, available at <http://grad.georgetown.edu/pages/bulletin.cfm>, and contact their academic Dean's office for more information.

Advantages of Taking a Medical Leave of Absence

Students who take a MLOA may be eligible to receive the following advantages that may not be afforded by another type of leave of absence:

1. For undergraduate and graduate students, a MLOA does not necessarily disrupt the student's guarantee of scholarships or funding.
2. A MLOA may allow a student to initiate a leave of absence and withdraw from classes later in the semester than is normally permitted for personal leaves of absence.
3. The length of time a student may take to recover while on a MLOA is typically longer than the length of time permitted by an academic program for a personal leave of absence.
4. For students with tuition reimbursement insurance, a MLOA generally qualifies a student for benefits under tuition insurance plans they may carry.
5. For international students, a MLOA may provide a way to remain in the US legally.

Medical Leave of Absence Process

The following procedures provide for an individualized approach for assessing a student's eligibility to take and return from a MLOA and are designed to be reasonable and flexible.

The Exit Process

Students who are experiencing significant health issues that are interfering with their academics or university life may choose to request a voluntary medical leave of absence. Students interested in a MLOA should contact their academic Dean's office, and the Counseling and Psychiatric Service or Student Health (hereinafter referred to as the "appropriate Health Service"). After a meeting with the student, the appropriate Health Service will submit a recommendation to the Dean's Office that a student's request for a MLOA be approved where the student's health, safety, or academic success has been compromised by a significant health issue. In recommending a medical leave, the appropriate Health Service will make individualized treatment recommendations to students designed to help them become academically and personally ready to resume life at the University. The appropriate Health Service's recommendation will be forwarded to the Dean's Office, who is responsible for granting leaves of absence. The exit process proceeds as quickly as possible to allow a student experiencing difficulties due to a medical condition to immediately step away from University life and receive the support they need.

Because every student's situation is different, the length of the recommended leave will be determined individually. The goal of taking a MLOA is to ensure that students return to the University with an increased opportunity for academic success and students should take the time to achieve this goal. Students should check in with their academic Dean's office prior to and during their leave as leaves may not be permitted indefinitely.

Returning from a MLOA

When a student is interested in returning to the University from a voluntary medical leave of absence, the student should take the following steps in order to initiate the re-enrollment process:

1. Contact his or her academic Dean's office and the appropriate Health Service to advise of the student's interest in re-enrolling well in advance of the intended return date. The appropriate Health Service requests that students submit all materials by November 1 for consideration for the spring semester, April 1 for the summer sessions, and June 30 for the fall semester. This ensures that the appropriate Health Service and the Dean's office have sufficient time to review the student's request and re-enroll the student. If materials are received shortly after the relevant deadline, the University will attempt to be flexible and review the student's request to return for the desired semester. However, if there is missing information and/or the University needs additional time to contact the

student's treatment provider, as discussed below, consideration for a return may be made for the following semester rather than the semester for which they were initially seeking to return.

2. Speak with the appropriate Health Service and Dean's office to determine whether any unfinished course work should be completed prior to returning from the leave.
3. Have treatment providers send a report documenting their work with the student, the student's clinical status, and an opinion as to the student's readiness to successfully resume academics and university life. The appropriate Health Service relies heavily on information received from the student's treatment provider. Students will be asked to provide Release of Information Forms to the appropriate Health Service so that its representative may communicate with treatment providers, the Deans, and the Academic Resource Center, where appropriate, regarding their return.
4. Depending upon the nature and individual circumstances of the MLOA, provide information to the appropriate Health Service showing that the student has reasonable capability of day-to-day functioning, with or without accommodations. The decision to require a student to provide this information is made on an individualized basis, and the decision and an explanation for this decision is conveyed to the student, in writing, during the exit process. The appropriate Health Service may also require this information be submitted at a later time if it determines that the information provided by the student's treatment provider is not sufficient to make a recommendation about return. In those cases, the appropriate Health Service will provide the student with a written explanation for this determination. There are many ways in which a student might be able to demonstrate their day-to-day functioning. Students may choose to provide documentation from a reliable adult community observer who can comment on a student's activities and readiness to resume university life. A reliable adult community observer could be a mentor, a member of the clergy, a work or community service supervisor, co-worker, personal trainer, athletic coach, or some other individual in a position to have observed the student during the course of the leave (not a family member). Where possible, the letter should be submitted on letterhead stationery, signed, dated, and describe the student's daily activities and the extent to which the writer feels the student is ready to resume studies at Georgetown University and participate productively in University life. The student may choose to have the letter sent to their Dean and ask the Dean to forward it to appropriate Health Service if more convenient. Alternatively, a student may provide the name and contact information of a reference who will be able to provide information concerning the student's daily activity and readiness to resume studies to the appropriate Health Service. The student will not have to disclose the reason for the leave of absence to the letter writer or reference.

5. Depending upon the nature and individual circumstances of the MLOA, provide a brief statement (no more than two pages) describing (1) the student's experience away from Georgetown including the activities undertaken while away, (2) the student's current understanding of the factors that led to the need for the leave, and the insights the student has gained from treatment and time away, and (3) how the student plans to ensure a successful return to Georgetown University. The decision to require a student to provide this information is made on an individualized basis, and the decision and an explanation for this decision is conveyed to the student, in writing, during the exit process. The appropriate Health Service may also require this information be submitted at a later time if the University determines that the other information submitted is not sufficient to make a recommendation about return. In those cases, the appropriate Health Service will provide the student with a written explanation for this determination. Any requests for additional information may extend the University's timeframe for reviewing requests to return. The University will notify the student of any situations where its review is delayed and the cause for the delay.

Processing a Student's Request to Return from a MLOA

Once a student has sent in the materials, he or she should call to double check that the appropriate Health Service has received these materials. Following a review of these materials, the Director of the appropriate Health Service, or the Director's designees, will determine if the student appears ready to resume academics and university life. The appropriate Health Service will recommend a student for a return where the documentation demonstrates that he or she is ready to resume studies and be a successful member of the campus community. Every effort will be made to respond to the student's request for return within 14 calendar days of submission of all the required materials. A longer response time may be caused by the inability to reach a student's treatment provider, high volume in the appropriate Health Service, or other extenuating circumstances.

As described above, the appropriate Health Service gives significant weight to the documentation of the opinion of student's treatment providers regarding the student's ability to function academically and safely at the University with or without accommodations. During the process of reviewing an application, if the appropriate Health Service determines that information provided by the treatment provider is incomplete, requires further explanation or clarification, or when there is a disconnect between the medical information provided by the treatment provider and other information in the student's files, the appropriate Health Service will contact the treatment provider to obtain additional information. In extraordinary circumstances (e.g., the University is concerned about the medical provider's credentials), the appropriate Health Service may request that the student undergo an additional assessment to allow the University to make a determination about the student's readiness for return. In those rare instances, the appropriate Health Service will notify the student of its rationale for making this request.

Once a student receives a satisfactory review, the appropriate Health Service will contact the student to request a check-in visit to review the students' safety and review their plan for sustained health, including recommendations for ongoing treatment, on or off campus. Students with disabilities may be eligible for reasonable accommodations and/or special services in accordance with the Rehabilitation Act of 1973 and the Americans with Disabilities Amendments Act (ADAA) of 2008. Students are responsible for communicating their requests for academic accommodations to the Academic Resource Center (ARC). Detailed information on the process for requesting accommodations may be found on the ARC website.

The appropriate Health Service will then provide a recommendation for return to the dean's office of the student's school or college, and the dean's office will make the final determination of whether a student is able to return. The Dean's office will be in touch with students regarding any applicable academic requirements upon returning to the University.

If upon review, the appropriate Health Service submits a recommendation to the Dean's office that a student is not ready for return, the student will be advised of the Health Service's recommendation in writing along with recommendations that will enhance the student's chance of a positive recommendation the next time the student's request is considered. A student may appeal the Health Service's recommendation that he or she is not ready to return to the University by submitting an appeal letter in writing to the Associate Vice President for Student Health within 10 business days of receiving notice of the negative recommendation. The student may also submit any information he or she believes to be relevant to the appeal. The Associate Vice President will review the student's submission and make a final determination as to recommendation for return.

Resolution Agreement

In order to resolve Case No. 02-11-2036, Drake College assures the U.S. Department of Education, New York Office for Civil Rights (OCR) that it will take the following actions pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794 et seq., and its implementing regulation, at 34 C.F.R. Part 104.

The execution of this Resolution Agreement does not constitute an admission that Drake College of Business has committed any violation of Section 504, or its implementing regulations. Nor does execution of this Resolution Agreement constitute any admission of other wrongdoing by Drake College of Business.

Action Item 1:

By June 10, 2011, the College will offer the complainant, in writing, an opportunity to enroll in the Program in August 2011, and agree to consider his request(s) for academic adjustments. The College may provide the complainant with a minimum of 20 calendar days to respond, in writing, to the College's offer. If the complainant accepts the College's offer, within 20 days of the complainant's acceptance of the offer, the College will consider the complainant's request for an academic adjustment for the phlebotomy course. The College will give primary consideration to the complainant's request to take the course without having other students draw his blood; but may also consider other alternatives.

Reporting Requirements:

- a) By June 10, 2011, the College will provide documentation to OCR demonstrating that it has offered the complainant, in writing, an opportunity to enroll in the Program in August 2011, and agreeing to consider his request(s) for academic adjustments.
- b) By August 1, 2011, if the complainant accepts the College's offer of enrollment, the College will provide documentation to OCR demonstrating that it has duly considered the complainant's request for an academic adjustment for the phlebotomy course, and that it gave primary consideration to the complainant's request to take the course without having other students draw his blood. If the College rejects the complainant's preferred academic adjustment, the documentation provided will demonstrate that the College considered other alternatives for accommodating the complainant; including but not limited to contacting other colleges and universities with similar programs to determine how these colleges and universities accommodate HIV positive students in phlebotomy courses.
- c) By August 1, 2011, the College will provide OCR with documentation demonstrating that the complainant has been notified of the outcome of the

College's decision regarding his request for an academic adjustment for the phlebotomy course.

Action Item 2:

By June 30, 2011, the College will adopt procedures that comply with the requirements of Section 504 to address students' requests for academic adjustments and/or auxiliary aids and services, such as requests for modifications of program requirements.

Reporting Requirement: By June 30, 2011, the College will provide OCR with documentation demonstrating that it has adopted appropriate procedures to address student requests for academic adjustments and/or auxiliary aids and services, in accordance with Action Item (2) above.

Action Item 3:

By July 29, 2011, the College will provide training to all relevant College staff on the College's procedures for addressing students' requests for academic adjustments and/or auxiliary aids and services.

Reporting Requirement: By July 29, 2011, the College will provide OCR with: (a) the name(s) of the individuals who conducted the training outlined in Action Item (3) above; (b) a list of the individuals who attended the training and their positions; (c) the date(s) the training was conducted; and (d) copies of any training materials disseminated.

Action Item 4:

By June 10, 2011, the College will notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability, and of the identity of the responsible employee designated to coordinate its efforts to comply with Section 504.

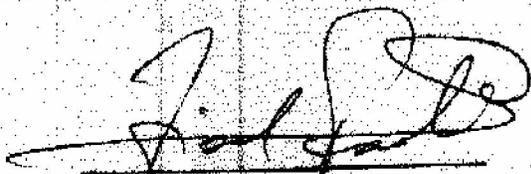
Reporting Requirement: By June 10, 2011, the College will provide OCR with documentation demonstrating that it has notified participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability and of the identity of the responsible employee designated to coordinate its efforts to comply with Section 504, in accordance with Action Item (4) above. Methods of notification may include the posting of notices, including on the College's website, publication in newspapers and magazines, placement of notices in the College's publications, and distribution of memoranda or other written communications.

Action Item 5:

By August 1, 2011, the College will include its notice of non-discrimination in all recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees.

Page 3 of 3 - Resolution Agreement - Case No. 02-11-2036

Reporting Requirement: By August 1, 2011, the College will provide OCR with copies of all recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, demonstrating that each of these contain the appropriate notice of non-discrimination and the identity of the responsible employee designated to coordinate its efforts to comply with Section 504.



Ziad Fadel, President

5-23-2011
Date



June 2, 2011

Ziad Fadel
President
Drake College of Business
125 Broad Street
Elizabeth, New Jersey 07201

Re: Case No. 02-11-2036
Drake College of Business

Dear Mr. Fadel:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against Drake College of Business. The complainant alleged that in or around August 2010, the College discriminated against him, on the basis of his disability, when it dismissed him from its Medical Office Technology Program (the Program).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). The College is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR interviewed the complainant and College administrators. OCR also reviewed information the complainant and College submitted. OCR made the following determinations.

The regulation implementing Section 504, at 34 C.F.R. § 104.8(a), provides that a recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability. The regulation implementing Section 504, at 34 C.F.R. § 104.8(b), provides that if a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. OCR reviewed the College's Student Catalog, dated October 2010, and the College's website. OCR's review revealed that the College does not notify participants, beneficiaries, applicants, and employees that it does not discriminate on the basis of disability, nor does it identify the responsible employee designated to coordinate its efforts to comply with Section 504.

The complainant alleged that in or around August 2010, the College discriminated against him, on the basis of his disability, when it dismissed him from the Program. Specifically, the complainant alleged that following a Program orientation he attended on or about August 3, 2010, he informed the College's Student Services Coordinator (the Coordinator) that he is HIV positive and did not wish to have his blood drawn in the required Phlebotomy course (the Course). The complainant alleged that the Coordinator and other College staff then told him he could not participate in the Program because of his medical condition.

The regulation implementing Section 504, at 34 C.F.R. § 104.44(a), provides 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 applicant or student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

OCR determined that the complainant was enrolled in the Program as of August 2, 2010. OCR determined that on or about August 3, 2010, during the Program orientation, the Coordinator advised students that during the Course, students would be drawing blood from fellow students.¹ OCR determined that following the orientation the complainant disclosed to the Coordinator that he is HIV positive. According to information the College provided, the Coordinator informed the complainant that all students are required to successfully complete the Course in order to graduate from the Program. She further advised the complainant that because of his medical condition, he could not take the Course; specifically, he could not draw blood from other students, as it would jeopardize the health and safety of students and faculty.² The College advised OCR that the Coordinator then escorted the complainant to the Financial Aid Administrator, who suggested that the complainant enroll in the College's computer program as an alternative to the Program.³ OCR determined that the complainant initially agreed to enroll in the computer program; however, he subsequently changed his mind and requested to attend the Program. OCR determined that the complainant was not allowed to return to the Program.⁴

On May 23, 2011, the College voluntarily agreed to implement the enclosed resolution agreement, which addresses the complaint allegation and the non-discrimination statement. OCR will monitor the implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This concludes OCR's consideration of this complaint. This letter is not intended, nor should it be construed, to cover any issues regarding the College's compliance with Section 504 that may exist and are not discussed herein. This letter sets forth OCR's determination in an individual OCR

¹ OCR determined that students also practice drawing blood on a model arm.

² The complainant alleged he told the Coordinator that he was comfortable drawing blood from other students, but was not comfortable with other students drawing his blood. College staff asserted that the complainant requested that the required Course be waived. The complainant denied ever requesting that the Course requirement be waived.

³ This information was provided to OCR in a written statement by the College's President.

⁴ OCR determined that the complainant was not dismissed from the College, but was considered a "no show," because he did not attend the computer program.

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 a right to file a private suit in federal court whether or not OCR finds a violation.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Diane Castro, Compliance Team Investigator, at (646) 428-3808 or diane.castro@ed.gov; or Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or anna.moretto.cramer@ed.gov; or Emily Frangos, Compliance Team Leader, at (646) 428-3831 or emily.frangos@ed.gov.

Sincerely,



Timothy C. J. Blanchard

cc: Nonresponsive (w/encl.)



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

November 17, 2011

Rev. Joseph M. McShane, S.J.
President
Fordham University
441 East Fordham Road
Bronx, New York 10458

Re: Case No. 02-10-2013
Fordham University

Dear Rev. McShane:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) with respect to the above-referenced complaint filed against Fordham University (the University). The complainant alleged that after he requested to voluntarily withdraw for medical reasons during the Spring 2009 semester, the University regarded him as disabled, and as a condition of readmission required him to: (a) submit excessive medical documentation from mental health professionals; (b) agree to attend periodic counseling; and (c) sign a waiver permitting the University to review his medical records.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). The University is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

In its investigation, OCR interviewed the complainant and University staff and administrators. OCR also reviewed documentation the complainant and the University submitted. OCR made the follow determinations.

OCR determined that during academic year 2008-2009, the complainant was enrolled at the University as a sophomore. The complainant did not identify himself as a student with a disability by registering with the University's Office of Disability Services prior to or during his enrollment.

OCR determined that in February 2009, the complainant requested a medical withdrawal due to complications he was experiencing from chronic fatigue syndrome. OCR determined that the

University does not have a specific policy regarding medical withdrawals; rather, the University has only a general policy for withdrawals. Once withdrawn, a student must apply for readmission through the Office of Admission.

With his request for a withdrawal, the complainant submitted medical documentation, which stated that in addition to chronic fatigue syndrome, he was suffering from panic attacks and was seeking help from a psychiatrist. By letter, dated February 27, 2009, the Assistant Dean for Sophomores (Assistant Dean) approved the complainant's medical withdrawal. The letter stated that "medical documentation must be submitted before readmission is considered," but did not describe the medical documentation required, or provide any other information about the requirements for readmission.

OCR determined that on June 10, 2009, the complainant sent an electronic mail message (email) to the Dean of Students requesting to return to school for the fall 2009 semester. OCR determined that the University does not have a written policy specifically pertaining to applications for readmission to the University following medical withdrawals. The University asserted that its practice is that all students who return from a medical withdrawal of any kind must provide documentation establishing that they are ready to return. With respect to students returning from a medical withdrawal related to mental health concerns, University staff acknowledged that its practice is to require all such students to satisfy the following conditions for readmission: (1) provide written responses from two mental health professionals to a list of questions;¹ (2) participate in an in-person evaluation by the consulting psychologist at the University's Counseling and Psychological Services (CPS); (3) submit a signed Statement of Expectations (SOE); and (4) provide a waiver permitting the University to review the student's medical records.²

Based on the above practice regarding students returning from a medical withdrawal related to mental health concerns, in emails dated June 16, 2009, the University informed the complainant that to be readmitted, he would have to provide written responses to a series of questions from both a psychologist and a psychiatrist whom he had seen at least twice. In addition, the University informed the complainant that he would have to meet with someone from CPS.

OCR determined that on August 3, 2009, the complainant submitted to the University his treating physician's response to the questionnaire. The complainant's physician, an osteopath, indicated that she met with the complainant to address his "panic disorders [and] depression" on June 8, 2007, and April 6, 2009; that his medical/psychological condition had improved; and that she did

¹ The questions include a request for a treatment summary, DSM-IV diagnosis, an opinion on whether the student's medical/psychological condition had improved, and a statement as to whether the student has "suicidal thoughts or behaviors, homicidal thoughts, self-injurious behaviors, substance abuse behaviors, eating disorder, impairment upon initial presentation."

² The University acknowledged that students returning from a medical leave because of a physical condition or injury are rarely required to submit to an evaluation by University medical or counseling personnel, or to sign an SOE. University staff informed OCR that the University's standard practice is to require a student returning from a medical leave because of a physical condition or injury to provide documentation demonstrating that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable. The University stated that the extent of the documentation required of a student returning from a medical leave because of a physical condition or injury is determined on a case by case basis.

not anticipate any difficulties should he return to campus full-time. The physician stated that the student did not have suicidal thoughts or behaviors, homicidal thoughts, self-injurious behaviors, substance abuse behaviors or eating disorders, and that his symptoms were currently controlled. She also stated that his panic disorder and depression had improved, and that she recommended that he continue to take Lexapro and be re-evaluated regularly for continued need. On that same date, the University informed the complainant that the documentation provided was not sufficient; specifically, it was not on official letterhead, did not give any detail or a specific DSM diagnosis, and did not include the doctor's signature. The physician refused the University's request to elaborate on her response and provide more information on signed letterhead, stating that she had already answered all their questions and did not have the time or resources to do more.

On August 5, 2009, the University requested that the complainant provide a psychiatrist's response to the same series of questions that his osteopath had answered.³ The complainant's former therapist refused to provide the requested information, so the University referred the complainant to a private social worker, who evaluated him and provided a letter to the University dated August 26, 2009, recommending that the complainant be readmitted.⁴ Following its receipt of the social worker's letter, the University also required the complainant to undergo a psychological evaluation from CPS. On August 28, 2009, CPS evaluated the complainant and found that "there appear to be no manifest impediments at this time to his clearance to re-enter the university." CPS also recommended that the complainant pursue psychotherapy, but stated that it "should not be required as a criterion for re-entry."

On September 1, 2009, the University presented the complainant with an SOE, which he was required to sign as a condition of his return to the University. The SOE included a requirement that the complainant engage in a semester of therapy with a counselor at CPS. The complainant objected to this requirement and refused to sign the SOE. On September 2, 2009, the complainant signed a revised SOE that stated that the complainant would engage in counseling with a clinical psychologist of his choice; and signed a consent form which would allow the treating psychologist to disclose his treatment data to the University. The Student matriculated on September 15, 2009. The complainant later objected to the counseling requirement in the SOE, dated September 2, 2009; and signed a revised SOE on October 9, 2009, specifying that he would adhere to his current regime of anti-depressant medication and would consider pursuing regular psychotherapy of his own initiation.

OCR reviewed the University's records for eleven students who applied for readmission after taking a medical withdrawal for reasons related to mental health concerns⁵ or substance abuse

³ The University informed the Student that even though they typically required a response from a psychologist and a psychiatrist, they would consider the osteopath's responses because she had been the only doctor to see the Student and had been the one who prescribed him an anti-depressant.

⁴ The social worker noted in her evaluation that the complainant was experiencing a low-grade depression related to his CFS; that "he did not describe his symptoms in a way that would warrant concern about a more serious form of depression;" and that she found his denial of active suicidal or homicidal thoughts to be credible. This social worker recommended that the complainant return to the University with a reduced course load, and that he meet with someone in the University Counseling Service "just to get acquainted in case he later has difficulty."

⁵ The University indicated that these students had the following diagnoses or symptoms: major depressive disorder; anxiety; mania; generalized anxiety disorder; bipolar disorder; alcohol dependence; adjustment reaction with

during academic years 2008-2009 and 2009-2010.⁶ OCR determined that each of the students, regardless of the nature or severity of their condition, was required to provide responses to the University's standard questions regarding their mental health from both a psychiatrist and psychologist;⁷ obtain an evaluation from CPS; sign an SOE; and sign a waiver granting permission for the University to review their medical records.⁸

Based on the documentation the University requested that the complainant provide prior to re-enrolling in the University, OCR determined that the University regarded the complainant as having a mental impairment that substantially limited one or more major life activities. OCR determined that the University categorically requires all students with actual or perceived mental health conditions, regardless of the nature or severity of their condition, to provide responses to the University's standard questions regarding their mental health from both a psychiatrist and psychologist; obtain an evaluation from CPS; sign an SOE; and sign a waiver granting permission for the University to review their medical records. OCR determined that the University does not evaluate students individually to determine whether all of these requirements are necessary for each student in order to support their readmission following a withdrawal for an actual or perceived mental health issue, regardless of the nature or severity of the student's condition. In contrast, OCR determined that for students seeking readmission after a medical withdrawal for a physical condition or injury, the University determines on a case-by-case basis what documentation is required to demonstrate that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable.

The regulation implementing Section 504, at 34 C.F.R. §104.4(b)(4), prohibits a recipient from utilizing criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability. In the case of the Student, OCR determined that his original request for a medical withdrawal was because of chronic fatigue syndrome. OCR determined that even after the Student's physician and the social worker who evaluated him reported to the University that there was no suicidal or homicidal ideation, or any indication that readmission would be inappropriate for the Student, the University required that the Student undergo a CPS evaluation because it was the University's standard practice. Moreover, even after the CPS evaluation concluded that there were no mental health issues that would impede the Student's re-enrollment, and stated that pursuing psychotherapy should not be a prerequisite for the Student's readmission, the University initially required the Student to sign an SOE that stated that he would pursue psychotherapy.

depressed and anxious mood - rule out major depression; eating disorder; suicidal ideation with a preliminary diagnosis of limbic encephalitis; and mood disorder.

⁶ The University was unable to identify any students who took a medical leave of absence due to physical disability during the same timeframe.

⁷ OCR determined that the complainant was the only student who provided a response from an osteopath and social worker, rather than a psychiatrist and psychologist.

⁸ The Dean of Students stated to OCR that the University requires students to sign an SOE only if it is "specific and appropriate to the particular student;" however, the documentation the University submitted to OCR indicates that all students seeking readmission after a withdrawal related to a mental health concern were required to sign SOEs.

On November 14, 2011, the University agreed to implement the enclosed resolution agreement. OCR will monitor implementation of the resolution agreement.⁹ If the University fails to implement the terms of the resolution agreement, OCR will resume its investigation.

This letter is not intended, nor should it be construed, to cover any issues regarding the School's compliance with Section 504 that may exist and are not discussed herein. This letter is intended to address this individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements 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 a right to file a private suit in federal court whether or not OCR finds a violation.

It is unlawful to harass or intimidate an individual who has filed a complaint or participated in actions to secure protected rights.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that if released, could constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination in this matter, please contact Miriam Nunberg, Compliance Team Attorney, at 646-428-3830 or Miriam.Nunberg@ed.gov, or or Felice A. Bowen, Compliance Team Leader at (646) 428-3806 or felice.bowen@ed.gov.

Sincerely,



Timothy C. J. Blanchard

Encl.

cc:

Nonresponsive

⁹ OCR has concluded that there is no individual remedy necessary for the complainant, since he was permitted to attend classes at the beginning of the semester while the SOE was being worked out.

2011-1715
120.0

Resolution Agreement
Fordham University
Case No. 02-10-2013

In order to resolve the allegation in Case No. 02-10-2013, Fordham University assures the U.S. Department of Education, New York Office for Civil Rights (OCR), that it will take the following actions pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104.

Action Item 1:

By November 30, 2011, the University will establish a written procedure for reviewing students' requests for readmission following a medical withdrawal, which ensures that the University determines on a case-by-case basis what documentation is required to demonstrate that the student is medically able to return and to fulfill the fundamental responsibilities of academic and residential life, if applicable. This written procedure will be applicable to all requests for readmission following a medical withdrawal, including for an actual or perceived mental health condition, or a physical condition or injury.

Reporting Requirements:

a) By November 30, 2011, the University will provide a copy of the procedure for reviewing students' requests for readmission following a medical withdrawal for OCR's review and approval.

b) Within fifteen (15) days of the University's receipt of OCR's approval, the University will provide OCR with documentation to substantiate that it has formally adopted the OCR-approved procedure; updated its printed publications and on-line publications with the procedure (inserts may be used pending reprinting of these publications); and electronically disseminated the procedure to students. This documentation will include at a minimum (i) printouts or a link to all on-line publications containing the procedure; (ii) evidence of the electronic dissemination of the procedure to students; and (iii) if not yet finalized, copies of inserts for printed publications.

c) By January 15, 2012, the University will provide to OCR copies of the printed versions of all publications disseminated to students and employees containing the procedure.

Action Item 2:

By February 1, 2012, and annually thereafter, the University will provide training to its officials and administrators, including but not limited to University deans and assistant deans, who will be directly involved in processing requests for readmission after a medical withdrawal. The

University's training will cover the University's procedures for reviewing and processing such requests.

Reporting Requirement:

By February 1, 2012, the University will provide to OCR copies of all training materials used, including all handouts or guides, and proof of attendance by appropriate officials and administrators.

Action Item 3:

The University will ensure that the procedure developed in accordance with Action Item (1) above is applied to all students, regardless of the nature or severity of their actual or perceived disability.

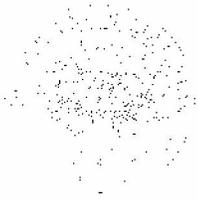
Reporting Requirement:

By December 31, 2012, the University will provide OCR with documentation regarding any students who applied for readmission during the Spring and Fall 2012 semesters. This documentation will include a complete record of the student's withdrawal request and reapplication, including, but not limited to, the student's withdrawal request and supporting medical documentation, the student's request for readmission and all supporting documentation, and all notices, letters, emails and other correspondence from the University provided to the student in response to the request for readmission.

The University understands that OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4, which was at issue in this case. The University also 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 this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. §§ 104.4, which was at issue in this case.

Date

Dr. Georgina Calia-Arendacs
Director of Equity / Equal Opportunity
Fordham University



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS - BUREAU

NOV 14 2011

Greg Chamberlain
President
Bakersfield College
1801 Panorama Drive
Bakersfield, California 93305

(In reply, please refer to Docket # 09-10-2048.)

Dear President Chamberlain:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Bakersfield College (College), which is part of the Kern Community College District (College District). OCR provided you notice of the complaint on November 27, 2009, in which the complainant alleged that the College discriminated against the complainant based on disability. Specifically, the complainant alleged that the College failed to provide academic adjustments and/or auxiliary aids necessary to ensure that the complainant could participate in the College's education program in a nondiscriminatory manner.

On December 18, 2009, after further review of the information contained in the complaint, OCR clarified the allegation and notified you it would investigate whether the College was denying students who are deaf or have hearing impairments the interpreter services necessary to ensure that these students can participate in the College's education program in a nondiscriminatory manner. During telephone conversations and in an October 6, 2010 email, OCR provided your legal counsel with more specific details including concerns about classes in which such students were enrolled and the classes were videotaped rather than simultaneously interpreted.

OCR investigated this complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability against certain public agencies. The College receives Department funds, is a public education system, and is subject to the requirements of Section 504 and Title II.

U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

OCR has determined that there was sufficient evidence to support a finding that the College was in noncompliance with Section 504, Title II, and their supporting regulations with respect to the issue investigated. Advised of OCR's determination, the College, without admitting to any violation of law, agreed to the corrective actions outlined in enclosed Resolution Agreement, which addresses the compliance concerns. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Legal Authorities

The Section 504 regulations, at 34 C.F.R. §104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contains a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. §104.44(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student 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. Section 104.44(d)(2) provides that 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. Recipient colleges and universities, however, need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

Under the Title II regulations¹, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity. Under 28 C.F.R. §35.135, public colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature. Section 35.103(a) provides that the Title II regulations shall not be

¹ OCR's investigation began in November, 2009. The U.S. Department of Justice's revised final regulation implementing Title II of the American with Disabilities Act became effective on March 15, 2011, but OCR applied the legal standards from the regulations then in existence to the facts that existed at the time of the alleged violation.

construed to permit a lesser standard than is established by the Section 504 regulations. Therefore, OCR interprets the Title II regulations to require public colleges and universities to provide necessary auxiliary aids to the same extent as is required under the Section 504 regulations.

The Title II regulations, at 28 C.F.R. §35.160(a), require a public college or university 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. "Companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate. The regulations at 28 C.F.R. §35.160(b)(1) further requires a public college or university to furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. In determining what type of auxiliary aid and service is necessary, 28 C.F.R. §35.160(b)(2) requires that 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. A college or university shall give primary consideration to the requests of the individual 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.

The Title II regulations, at 28 C.F.R. §35.160(d), further require that where a public entity chooses to provide qualified interpreters via video remote interpreting (VRI) services, it shall ensure that it provides (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) A clear, audible transmission of voices; and (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI.

The Title II regulations, at 28 C.F.R. §35.104 define auxiliary aids and services to include (1) Qualified interpreters on-site or through VRI services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders, open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications

devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. The definition of a qualified interpreter is an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Communication is construed broadly to mean the transfer of information. In determining whether communication is as effective as that provided to non-disabled persons, OCR looks at whether it was provided in accessible formats, in a timely manner, in such a way as to protect the privacy and independence of the individual with a disability, the accuracy of the communication, and whether the manner and medium used are appropriate to the significance of the message and the abilities of the disabled individual.

The Section 504 regulations, at 34 C.F.R. §104.4(a) and (b), also provide 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 Title II regulations, at 28 C.F.R. §35.130 (a) and (b), create the same prohibition against disability-based discrimination by public entities.

Under 34 C.F.R. §104.4(b)(4) a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that: (i) have the effect of subjecting qualified disabled individuals to discrimination on the basis of disability; (ii) have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity for individuals with disabilities; or (iii) perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State. The Title II regulations contain a similar provision applicable to public entities, at 28 C.F.R. §35.130(b)(3).

Complaint

The complaint alleged that students who are deaf or have hearing impairments were being denied interpreter services. The complaint alleged that instead of receiving timely interpreter services, the College was making a videotape of class sessions and then requiring students to set up a separate appointment at a later time with an interpreter to have the videotape interpreted. The complaint stated that the College practice did not allow students to participate in classroom lectures and lessons. The complaint further alleged that students still needed to attend regular class and that this arrangement created a burden on deaf or hearing impaired students' schedules by requiring these students to spend more time for each class than was required for students without disabilities.

Facts

- The Disabled Student Programs & Services Director (DSPS Director) advised OCR when the investigation began that the College had four full-time, and four part-time employees who provided interpreter services. She stated at the time that the College did not use contract or volunteer sign language interpreters. At the time, the College had one contract real time captioner.
- The Fall, 2009 semester started August 24, 2009 and ended December 12, 2009. The Spring, 2010 semester started January 18, 2010 and ended May 15, 2010. The College data response provided an initial list, from the Fall, 2009 and Spring, 2010 semesters, of 19 students who were qualified individuals with disabilities who requested, and were approved by the College to receive, interpreters for their College courses. OCR added two students to this list based on documents received from the College on June 30, 2011.
- The DSPS Director stated there was a short-term shortage of interpreters during the Fall, 2009 semester because (1) a part-time interpreter resigned in September, 2009, and was replaced by a short-term (temporary for that semester) employee in mid-November, 2009; (2) a full-time interpreter was unavailable due to illness for approximately two weeks; (3) the College discovered that several interpreters employed by the College were not receiving a 30-minute lunch break; and (4) the College District and the College were undergoing "tremendous" budgetary strain and there were layoffs College-wide and in the DSPS program.
- The DSPS Director stated that state funding for the DSPS was cut by 42 percent in 2009, and the College reduced classified staff overall. She also stated that for the Spring, 2010 semester, budget restraints did not impact the situation with interpreters at all.
- The DSPS Director stated that in the short term, interpreters were re-assigned as available to cover courses as necessary, and when no interpreter was available, she made the decision that the College would videotape classes and offer to students an interpreter to interpret the videotape later. The Director stated that DSPS assigns interpreters, first, on student need and agreed upon accommodation, and if necessary due to shortages or illness of interpreters, the DSPS provides an alternative accommodation. During her interview, the Director did not identify any "alternative accommodation" other than the Deaf Services Coordinator trying to find substitute interpreters for a class session, and videotaping. She stated that interpreters were kept in lab classes and lecture classes were videotaped, or the reverse, depending on student need. The Director stated that videotaping was a last resort, and only a last resort.
- The College provided to OCR an initial chronological list of class sessions for Fall, 2009 and Spring, 2010 for which interpreters were not available to interpret for class sessions. The list begins August 24, 2009 and ends March 17, 2010. The DSPS

Director and the Deaf Services Coordinator stated that there have been instances, since March 17, 2010, where class sessions had been videotaped because an interpreter was not available. A student who was approved by DSPS to have an interpreter stated to OCR that as recently as November 3, 2010, an interpreter was not available for one of her class sessions, and the class session was videotaped.

- College data shows that the College failed to provide an interpreter for 56 class sessions (or roughly six percent) out of a total of 840 class sessions for the Fall, 2009 semester, and 17 class sessions (or roughly three percent) out of a total of 555 class sessions for the Spring, 2010 semester for 24 and 16 courses, respectively. For Summer, 2010 and 2011 semesters, no class sessions were videotaped due to an interpreter not being available, but class sessions were videotaped for that reasons nine times for the Fall, 2010 semester, and six times for the Spring, 2011 semester. Some, but not all of the class sessions for which an interpreter was not provided were videotaped. Further, some but not all of those sessions were "captioned" for students. One student was approved for both interpreters and captioners.
- Initial data from the College also included 17 emails from the Deaf Services Coordinator to students that show communication with students (most often on the day of the class session) about interpreters not being available for class sessions. In most of these emails, the Coordinator informed a student that there was no interpreter available, and that a class session will be videotaped. There are no emails from the Coordinator that serve as examples of an interaction between the Coordinator and students about whether videotaping will, or will not, provide effective communication for any particular student, or that show the Coordinator was seeking input from students. In one email, the student replied to the Coordinator's email and stated he will "...try to do it [the class session] himself and see how it goes...."
- The College described its system of delivery for interpreters as beginning with a student's referral to the Deaf Services Coordinator, with whom the student interacts to review the student's disability and educational limitations, and to develop individualized accommodations. As part of the process, after a student has been confirmed to have an interpreter for registered classes, a student is advised to return to the Coordinator if the student encounters any difficulties during a semester.
- The Deaf Services Coordinator identified 10 out of the initial group of 19 students who came to her as soon as the College started videotaping their class sessions when an interpreter was not available. She stated that in the beginning of the Fall, 2009 semester, the students expressed their concerns to her about videotaping, and asked for their interpreters. She stated that she gave them a copy of a handout that described student options (including talking to DSPS or the Vice President of Student Affairs, or filing an OCR complaint).

- The DSPS Director stated that DSPS informs deaf and hard of hearing students that they must attend class even if an interpreter is not present for a class session because only the instructor/professor can excuse a student from class, not the DSPS. The Director stated that a student is asked by either the person doing the videotaping, or the professor of the class, to sit in the front of the classroom, and ask the professor questions by passing a note to the professor. The Deaf Service Coordinator had not heard of anyone from the College asking these students to sit in front of the class and ask questions by passing a note. With regard to how any student, without an interpreter present, could obtain the information from a lecture given by a professor, could interact with a professor—including passing notes—or could interact with other students, the DSPS Director stated that she knew that making a videotape was not the “ideal accommodation” and was instead a last resort. She stated that she knows that students cannot communicate without an interpreter in class. The Director stated that DSPS would not know, on any particular class day, what type of instruction method an instructor/professor was going to use. For example, it could be a Power Point printed out and given to each student. She also stated that she has seen an example where an instructor posted entire lectures on the instructor’s web site, and expected students to read the content before class. The DSPS Director did not have a response to OCR’s concern that some deaf or hard of hearing students may have lower than college-level English skills and that consequently, on-line lecture notes or even fully captioned tapes may not provide such students effective access to the content of lectures.
- The College had three levels or “time slot” type of interpreters: “35-hour employees,” “30-hour employees,” and “1 to 19-hour employees.” The DSPS Director and the Deaf Service Coordinator stated that for a time during the Fall, 2009 semester, the DSPS office was filling gaps in the interpreter schedule by offering the 1 to 19-hour employees additional hours, but that they were eventually notified by the College Human Resources office that this practice was not permitted because of contract and labor issues.
- The Attorney representing the College and the DSPS Director stated that the College is not taking the position that videotaping a class session was as effective as a class session with an interpreter present.
- Students stated to OCR that the effectiveness of communication provided them by a videotape of a class session varied. Student one stated she never watched videotapes, didn’t like the alternative of a captionist and had to withdraw from two classes because of the extra work captioning caused. Student two stated he never watched videotapes because scheduling a separate appointment with an interpreter took too much extra time. Student three stated that the videotape was not effective for him because he did not like having to watch it for two to three hours straight without stopping. He stated the videotape was going too fast for the interpreters for him to ask any questions about the videotape, and he also could not ask the teacher questions during the videotape interpreting because the teacher was not present while the tape was playing. Student four stated that her only experience was

watching the one videotape made in one of her class sessions. She stated that this videotape was effective because the interpreter who interpreted the videotape was clear and understandable, and she could review over and over until she understood—something she stated she could not have done in “real-time” class. Student five stated that she only tried to watch a videotaped class session once, and did not like it because she had to make extra effort to schedule a session with an interpreter. She stated that the interpreter only stayed and interpreted half of an hour of an hour-long class's videotape because the interpreter had a schedule conflict. She stated her experience with the videotape was awful. She stated she did not feel she could learn as much from the videotape as with an interpreter, or have the same opportunity to participate as other students. After watching the videotape, she was not clear what the homework was or what the teacher was teaching.

- Student four did not have communication with anyone from the College prior to the one videotape being made of one of her class sessions when an interpreter was not available. Student five stated that most of the time, the Deaf Services Coordinator would email her to notify her that an interpreter was not available for a class session, but she also stated that she was never given an opportunity to discuss the shortage, or what kind of alternative auxiliary aid would work for her.
- The Deaf Services Coordinator stated that she is one of the College's interpreters, and she is responsible for making and altering the interpreter assignment schedules. She stated she tried to find a substitute by referring to the schedules, working with them to try to find a substitute, and if none was available, she would check to see if she was available to interpret herself for the class session. If she could not, she would arrange for the class session to be videotaped. She stated that she tried to shuffle videotaping so that any one course, which appeared that it might be videotaped over and over, would not always be videotaped. She stated that she would try to check on what was taking place to see if it was “a good class” session for videotaping before making the decision of where to videotape and where to send the available interpreters.
- The DSPS Director stated that if students had questions about a videotaped class they could ask the instructor questions during the instructor's office hours, where an interpreter would be provided. The Deaf Service Coordinator stated that the “big bump” occurred in September, 2009, when the frequency of being short an interpreter and of class sessions being videotaped was greatest.
- The Deaf Services Coordinator stated that she contacted faculty to notify them that a class session would be videotaped if an interpreter was not going to be available, and a substitute interpreter could not be scheduled. However, the Coordinator did not consult with individual course professors before each class session to determine the complexity of the course lecture for that day, or whether videotaping that day's lecture would be appropriate and effective for the student enrolled in the course and approved to have an interpreter.

- The Deaf Services Coordinator stated that she could provide no example of a student who was approved to receive an interpreter in class and with whom she discussed whether videotaping would or would not be effective for the student prior to videotaping the class session. She explained that there was not enough time to make contact with the students to make this determination, and that students were not always in her office to discuss videotaping before a class session was videotaped.
- The Deaf Services Coordinator stated she had conversations about an automotive course with two students. She stated that this was one example of where she picked an interpreter instead of videotaping because videotaping did not work as well for the two students taking that class.
- The Deaf Services Coordinator stated that 11 of the initial group of 19 students have less than college-level English skills. She stated that she took into consideration the English skills of two students when making the decision to videotape a class session because these two students had strong English skills.
- DSPS Director stated the College attracted qualified interpreters by networking, contacting professional organizations, and advertising. DSPS Director stated that she was only involved in the advertising, and that the College Deaf Services Coordinator did the networking and contacting professional organizations. With regard to the College's efforts to recruit new interpreters (which the DSPS Director described as being the Deaf Services Coordinator's responsibility) the Deaf Services Coordinator provided no specific examples of how, when, or where she engaged in "networking" or "contacting professional organizations" in the past, but stated that she is always recruiting for new interpreters because she is part of the "interpreting community." The Deaf Services Coordinator stated that she could not recall whether the DSPS office, during the Fall, 2009 semester, tried to advertise for any needed interpreter position.
- DSPS Director stated that as of March, 2010 interpreter salary ranged from \$19.92/hour to \$32.46/hour. The rate is set by College Human Resources. The College's attorney stated that interpreter salary is negotiable because they are classified, and covered by a union. The DSPS Director stated that she believed the wage offered for interpreters by the College as part of the search for the part-time interpreter's replacement was competitive because a year or two ago, the entire interpreter job family (including the Deaf Services Coordinator) was reviewed by the HR office, and every classification received a rate of pay increase.
- In June, 2009, prior to the start of the Fall, 2009 semester in August, the District stated that it advertised to the public two interpreter positions by posting on six websites, the District's website, and on all District locations. In addition, the District stated it advertised in four newspapers. One position was filled in June, 2009.

- Other than having one unfilled interpreter position that was initially announced in June, 2009, the District provided no information that, between June, 2009 and December 4, 2009, it took any additional steps to hire new interpreters.
- On December 4, 2009, two "in-house" recruitment or transfer notices were posted for two interpreter positions that the District stated was "...in accordance with bargaining agreement." The same positions were posted publically December 18, 2009 after there were no internal applicants. The District stated that it advertised the two December, 2009 interpreter positions by posting on nine websites, on the District's website, and on all District locations. In addition, the District stated it advertised in one newspaper and at the CSU Bakersfield Career Center. One position was filled in April, 2010 and one in June, 2010.
- On July 30, 2010, the District posted an interpreter position that the District stated was posted "in house" in accordance with a bargaining agreement. The same position was posted August 11, 2010 to August 25, 2010, to the public. The District stated that it advertised the August 11, 2010 interpreter position by posting on seven websites, on the District's website, and on all District locations. In addition, the District stated it advertised in one newspaper and at the CSU Bakersfield Career Center. As of November 16, 2010 there were no applicants.
- On September, 21, 2010 the District stated that it advertised to the public a short-term, hourly interpreter position by posting on seven websites, the District's website, and at all District locations. In addition, the District stated it advertised in one newspaper, and at the CSU Bakersfield Career Center. As of November 16, 2010 there were no applicants.
- While OCR did not inquire about all of the positions the College advertised between November, 2010 and June, 2011, the Deaf Services Coordinator stated that there were no applicants for the two interpreter positions the College advertised in June, 2011. The Deaf Services Coordinator also stated that the College started to use a vendor to provide contract interpreters in approximately the beginning of the Spring, 2011 semester.

Analysis and Conclusions

The College did not meet its responsibility to provide auxiliary aids to students when it failed to provide qualified interpreters on a timely basis to deaf and hearing impaired students for certain class sessions. These students had been approved by the College to receive interpreters as an auxiliary aid. 34 C.F.R. §104.44(d). Such interpreting was necessary to ensure that classroom communication for these students was as effective as communication with other students. 28 C.F.R. §35.160(b). While the evidence shows that some students were affected more than others by the shortage of interpreters, at one time or another all 21 students were not provided with the auxiliary aids necessary to participate effectively in the College's courses.

The College took well-intended and creative steps to mitigate the impact of its interpretation predicament. These practices, however did not meet the legal standards that require the provision of "other effective methods" leaving the College short of meeting its compliance responsibilities to these students.² The College videotaped class sessions for the students before it had made a determination, based on an exchange of information with each affected student, that a videotape of a class session would be an effective means for each student to obtain classroom communication. The College advised these students to attend class sessions without an interpreter present when the class session was being videotaped, and then to schedule another time to view the videotape with an interpreter. The effect of this advice was to double the amount of class attendance required for these students compared to students not in need of an auxiliary aid to make classroom communication effective and to require them to be present at times where communication may well have been of very limited value.

It was appropriate and necessary that the College provided students who complained about the absence of auxiliary aids with accurate notice of the availability of internal and external grievance procedures for complaints of discrimination, as required by the Section 504 and Title II regulations.³ This too, however, was not an "other effective method" and did not cure the College's failure to timely provide auxiliary aids. Under the regulations, the burden is on the College to provide the auxiliary aid, not on students to advocate for compliance or make their own arrangements with professors over attendance when interpreters are not available. Failure to satisfy this burden also constituted discrimination.⁴

When, despite mitigating efforts, interpreting resources within a recipient's control are insufficient to meet the educational needs of students with disabilities, absent a showing of undue burden or fundamental alteration, the college must take timely, well-calculated, and effective steps to acquire the additional necessary resources. Here, the College recognized for itself that it faced a shortage of interpreters. Nonetheless, it adhered to a set of "methods of administration" that compounded rather than resolved its challenges in providing auxiliary aids to students who needed them:

² The Title II regulations enforceable by OCR at the time, at 28 C.F.R. §35.103, provided that auxiliary aids and service included a list of items, followed by the requirement that auxiliary aids of services also include some "other effective methods of making orally delivered materials available to individuals with hearing impairments" as well as "other similar services and actions." The appendix to the Title II regulations provided that "The public entity shall honor the choice unless it can demonstrate that another effective means of communication exists or that the means chosen would not be required under" another provision of the Title II regulations.

³ Grievance procedure requirements for Section 504 are found at 34 C.F.R. §104.7, and for Title II at 28 C.F.R. §35.107.

⁴ See *Huezo v. Los Angeles Community College District*, 672 F. Supp. 2d 1045, 1061 (C.D. Cal. 2008) (College district's failure to take affirmative steps to ensure that its programs and activities were readily accessible to people with disabilities constituted unlawful discrimination), citing *Putnam v. Oakland Unified School District*, 1995 U.S. Dist. LEXIS 22122, 29 (N.D. Cal. 1995) (School district's failure to remedy program access barriers until a disabled student personally requests a modification constituted unlawful discrimination.)

- The College stated to OCR that "labor and contract rules" kept it from using four identified and qualified interpreters beyond a set number of work hours. The College did not state to OCR that at the time it could not find or identify individuals qualified to conduct interpreting, but stated that labor and contract rules kept it from using four interpreters beyond a set number of work hours. Nonetheless, the College did not undertake the personnel actions that would have allowed it to harmonize these Federal and State laws, rules, and contracts.⁵
- While the College posted two interpreter positions in June, 2009 and hired one in June, 2009, the College offered no evidence that it made new job postings or actively recruited new interpreters until December 4, 2009 when it posted an in-house internal recruitment/transfer opportunity. This was so even though this was the period of time at the College, as described by the Deaf Services Coordinator, of the "big bump" when most class sessions were without an interpreter and were being videotaped.
- Even when these December, 2009 positions were opened to the public, the College hired no new interpreters until four months later, in April, 2010. OCR notes that the Director was aware of a candidate for the part-time replacement for the interpreter who resigned in September, 2009 but that she encountered difficulty within the College's administration to quickly fill that position.

OCR received documents from the College and interviewed College staff throughout its investigation. These documents and interview statements demonstrated that as recently as May 11, 2011 the College did not have adequate interpreters to provide interpretation for students known to OCR since the beginning of the investigation, and two new students, taking College courses. Based on the above facts and analysis, OCR concluded that a preponderance of the evidence established that the College failed to provide students who are deaf or have hearing impairments the interpreter services necessary to ensure that these students can participate in the College's education program in a nondiscriminatory manner in violation of Section 504, Title II, and their regulations. 34 C.F.R. §§104.4(b)(4), 104.44(d); and 28 C.F.R. §35.160(b). Although the College provided evidence of several efforts to mitigate the impact of this shortage, a preponderance of the evidence was sufficient to establish that these efforts were not effective alternatives to timely and qualified interpreting services.

During the course of this matter, the College alluded to or raised several defenses. Some, such as constraints created by its collective bargaining agreement, under the circumstances of this case, did not state a valid defense as a matter of law. Others, such as "undue burden," state a legal claim, at least under Title II, but are "affirmative" in nature, placing on the College a burden of proof. In this case, the College did not provide sufficient evidence to meet that burden.

⁵ In this matter, OCR did not have to address the relative authority of State Law, local personnel rules, collective bargaining agreements, and Federal Civil Rights Law as no irresolvable conflicts between these authorities existed under the facts presented to OCR.

Since sharing its anticipated findings with the College, the College and OCR have worked together constructively to resolve this matter. The College, without admitting to any violation of law, and OCR reached an agreement that, when fully implemented, will resolve the issues raised in this case. The agreement which includes a provision for hiring additional interpreter resources and subsequently reviewing and assessing any remaining additional needs for the possible acquisition of additional resources, is memorialized in the Resolution Agreement that is enclosed with this letter. Closure of this case is contingent upon the College's successful completion of the steps outlined in the Resolution Agreement, and the College will report to OCR on its progress in completing those steps.

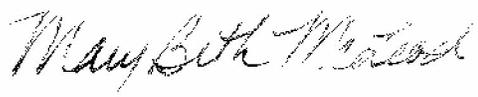
This concludes the investigation portion of this complaint. The Complainant is being notified concurrently.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information that, if released could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR thanks the College and its counsel for its cooperation in resolving this case. If you have any questions about this letter, please contact David Christensen, OCR attorney, at 415-486-5554, or me, at 415-486-5537

Sincerely,



Mary Beth McLeod
Team Leader

cc: Eileen O'Hare Anderson, Esq. (*via email only*)
Liebert Cassidy Whitmore

Enclosure

**Resolution Agreement
Bakersfield College
Case No. 09-10-2048**

In order to resolve the issues in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) and ensure compliance with Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, and their implementing regulations, the Bakersfield College (College) agrees to take the following actions.

The College understands that OCR will not close the monitoring of this agreement until OCR determines that the College has fulfilled the terms of this agreement and is in compliance with the regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504) and Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12131 et seq. (Title II), at Part 104 and Part 35, which were at issue in this case.

The College 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 this agreement. Further, the College understands that during the monitoring of this agreement, if necessary, OCR may visit the College, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the College has fulfilled the terms of this agreement and is in compliance with the implementing regulations which were at issue in this case. If OCR finds it necessary to visit the College, or interview staff, OCR will provide reasonable notice to the College President.

- A. In order to comply with the Title II regulation found at 28 C.F.R. Part 35, Subpart B, the College will take all steps necessary to ensure that students who are deaf or hard of hearing will receive the level and type of auxiliary aids and services necessary for them to receive equal access to the information-content of any course in which they enroll or program of the College in which they participate. This will include access that is timely and accurate. The College will not rely upon auxiliary aids that materially diminish the ability of its students who are deaf or hard of hearing to participate in class as the class is taking place.
1. The College will add to its qualified sign language interpreters employed as of August 16, 2011 by either (1) combining and filling one already filled 1-19 hour per week position with an unfilled 1-19 hour per week position to create a 1,300 hours per year guaranteed position as described to OCR on August 16, 2011, or (2) fill the equivalent of one 1-19 hour per week position to provide interpreter services to students.
 2. The College will conduct a review of its system of delivery for interpreters in order to assess what its current needs are to meet its responsibilities under paragraph A, above. The review and assessment will be captured in a written report. The review and assessment will take into consideration the option of the College using contract interpreters. The review and assessment will also take into account any applicable personnel rules or collective bargaining provisions that will affect the College's ability to meet the requirements of paragraph A. If the review and assessment show such a need, the College will hire sufficient numbers of qualified sign language interpreters to provide effective coverage under normal circumstances and sufficient excess capacity for logically predictable resource

shortages, e.g., illness, accidents, family and personal emergencies. If the review shows no need for additional qualified sign language interpreters, the College will not be required under the authority of this agreement to hire any new qualified sign language interpreter(s). If the review shows the College has exceeded its need for qualified sign language interpreter(s), the College is not required under the authority of this agreement to keep the combined position or new 1-19 hour per week position required by paragraph A.1 above.

- B. The College will identify in writing the auxiliary aid or service offered to each student by the College. The College will also identify any alternative auxiliary aid(s) or service(s) offered by the College listed for each student in an order of preference mutually agreed to by the student and College. For students who prefer interpreting services to access information, the College will not provide these students with an alternative auxiliary aid or service unless it has made a determination and can demonstrate that, despite all its diligent efforts to obtain interpreters, an interpreter could not be obtained.
- C. The College will make an offer to any of the 21 students identified during OCR's investigation for whom it has current addresses or other contact information to exercise the option to retroactively administratively drop any course listed by the College in its June 30, 2011 emailed spreadsheet titled *Course Titles*, and any fees paid to the College refunded in full to the student. The College will advise any students who needed the units in these courses for a degree or certificate of the consequences for dropping the course. The College will also refund the purchase price of any textbooks associated with those courses as long as the student has the book and returns it to the College DSPS Office.
- D. The College will make an offer to any of the 21 students identified during OCR's investigation for whom it has current addresses or other contact information to repeat any course listed by the College in its June 30, 2011 emailed spreadsheet titled *Course Titles* at no cost to the student (unless the student retroactively administratively dropped the course pursuant to paragraph C above, in which case the student will need to pay to retake the course). For each student selecting to repeat any course for which the student obtained a grade, the College will provide the student the option--after a grade has been issued for the repeated course--of keeping the student's original grade, or replacing the original grade from the original course with the grade from the repeated course. Any student covered by this provision must repeat the course within two academic years of when they elect this option.
- E. Timeframes and Reporting.
 - 1. By [ten calendar weeks after the College signs this Agreement], the College will report to OCR with evidence that it has either advertised and attempted to hire but been unsuccessful, or advertised and hired the position described in paragraph A.1., above. If the College is initially unsuccessful in filling the position, the College will notify OCR as soon as the position has been filled.
 - 2. By [ten calendar weeks after the College signs this Agreement], the College will report to OCR with evidence that it modified its system of delivery of interpreter services as described in the College's Data Request response letter, page 4, to include identification in writing the auxiliary aid or service offered to each student to whom it offers an interpreter, listed in an order of preference mutually agreed to by the student and the College.

3. [Within four calendar weeks after the College signs this Agreement], the College will report to OCR with evidence it has made the offer specified in Item C to students.
4. [Within four calendar weeks after the College signs this Agreement], the College will report to OCR with evidence it has made the offer specified in Item D to students. If a student attempts to complete a repeated course, but is not successful, the College has no other obligation under this Agreement than to notify OCR of this fact.
5. [Within 13 calendar weeks after the College signs this Agreement], the College will provide OCR with a copy of its review and assessment report that identifies its needs, and includes a concrete description of the steps the College has taken, or will be taking in the future, to address each identified need. The College will implement all the steps identified in the review and assessment report expeditiously, but no later than [within 25 calendar weeks after the College signs this Agreement].
6. Within a week after the conclusions of the Fall and Spring academic semesters that end after the College signs this Agreement, the College will report to OCR with information on services it provided to deaf and hard of hearing students. The report will include a list of the students who were approved to receive interpreters, the courses for which interpreters were approved, and details about whether interpreter services approved were provided in a timely and accurate manner for each student in each class session of each course.



Ibrahim "Abe" Ali
Vice Chancellor, Human Resources

11/10/11

Date



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS (OCR)

FEB 17 2012

Glenn R. Roquemore, Ph.D.
President
Irvine Valley College
5500 Irvine Center Drive
Irvine, California 92618

(In reply, please refer to case no. 09-11-2261.)

Dear President Roquemore:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation into the above-referenced complaint against Irvine Valley College (College). The Complainant¹ alleged discrimination on the basis of disability. OCR investigated the following two issues:

1. Whether, during June and July 2011, the College failed to provide the Complainant with approved accommodations necessary to ensure that she could participate in the education program in a nondiscriminatory manner; and
2. Whether the College retaliated against the Complainant after she filed an internal complaint alleging a Professor graded her more harshly and issued her failing grades for assignments she states she was never given.

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation. Section 504 prohibits discrimination on the basis of disability in programs and activities operated by recipients of Federal financial assistance. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 and its implementing regulation over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College receives Department funds, is a public education system, and is therefore subject to the requirements of Section 504 and Title II.

OCR gathered evidence through interviews with the Complainant, College staff and faculty, including another student at the College. OCR also reviewed documents provided by the College and the Complainant.

¹ OCR notified the College of the identity of the Student when the investigation began. We are withholding the Student's name from this letter to protect the Student's privacy.

OCR has concluded that there is insufficient evidence to establish a violation of Section 504, Title II or the regulations with respect to the issues investigated in this case. The facts gathered during the investigation, the applicable legal standards, and the reasons for our determination are summarized below.

Issue One: Whether, during June and July 2011, the College failed to provide the Complainant with approved accommodations necessary to ensure that she could participate in the education program in a nondiscriminatory manner.

The Section 504 regulations, at 34 C.F.R. § 104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. § 35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

The Section 504 regulations, at 34 C.F.R. § 104.4(b)(2), provides that aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for disabled and non-disabled persons, but must afford disabled persons 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.

Under the Title II regulations, at 28 C.F.R. § 35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others.

The regulations implementing Section 504 require that colleges and universities modify their academic requirements as necessary to ensure that they do not discriminate, or have the effect of discriminating against, qualified students with disabilities. A college may require students to provide documentation verifying their disabilities and their need for accommodation. Once it receives such documentation, a college must engage in on-going communications with the student to identify specific academic adjustments and accommodations that will enable the student to participate equally in the college's program. In some cases, where the impact of a student's disability may change over time, or where the impact is difficult to predict accurately, on-going or recurring communication may need to take place.

Under Section 504 and Title II of the ADA, at the postsecondary level, assuming appropriate notice by the recipient of how to obtain accommodations, students bear the responsibility for seeking and obtaining approval for academic adjustments and/or auxiliary aids from the proper authority, usually a disabled student services (DSS) officer. In circumstances where it would not be evident to a DSS officer the student may also have to let the DSS officer know when approved classroom accommodations are not being provided. In order to do this, the student and the educational institution

should be engaged in on-going communication. However, upon notification of such concerns, the educational institution, not the student, has the responsibility to promptly resolve the matter.

The investigation showed the following:

- The Complainant has a medical diagnosis of anxiety and panic disorder. In fall 2010, the Complainant attended the College and was registered with the College's Disabled Student Programs and Services (DSP&S) office. In addition to other accommodations, DSP&S authorized the test taking accommodation of "extended time," "distraction reduced environment," "notetaker as needed" and a "tape recorder."
- In the fall 2010 semester, the Complainant was enrolled in a Speech (b)(6),(b)(7)(C) course with a Professor (Professor) at the College. Towards the end of the fall semester, the Complainant and Professor agreed that Complainant would take an "incomplete" in the course and re-take the course.
- On or about December 17, 2010, the Professor filled out the "Incomplete Grade Record" Form (contract) for the Complainant. The contract listed several assignments that had to be completed by "12/20/2011." The contract had the Professor's signature and date of "12/17/2010" but did not have the Complainant's signature, but an "X" was marked in the area that indicated that "if student was not available to sign the conditions stipulated on the Incomplete Grade Record," the form could be "[e]-mail."
- The Complainant attempted to re-take the Speech course during the 2011 summer semester. The Complainant alleges that the Professor failed to provide her with a notetaker or his notes during the summer course. Complainant stated that she got herself a notetaker and that she used her own tape recorder.
- The Professor stated he did not ask for a notetaker in the summer course. He stated that because he had provided the Complainant with his PowerPoint slides/lecture notes in the fall 2010 semester and he provided her his notes during the summer session. He stated that she accepted getting the notes as opposed to having a notetaker.
- Complainant alleges that the Professor failed to give her the extra time for the summer mid-term exam and she was not able to take the exam in a distraction-reduced environment. The Complainant added that because the Professor did not provide her with any instructions prior to the exam, she had to re-write the exam at the end.
- The Professor stated he gave her the time and half for her mid-term. The Professor stated that on the day of the exam, he walked over to the DSP&S office with the Complainant and the mid-term exam. He stated that because he

did not know DSP&S closed at 5PM, which meant that the Complainant would not be able to complete the exam before the office closed for the day, he put the Complainant in an empty office to take the exam. He stated while the Complainant did not seem happy about it, she agreed to the arrangement. The Professor stated he timed the exam and checked on her after the time and half was over. He stated that when he saw that she had misread the instructions for the exam (instead of answering one of the three questions on the exam, she had answered all three questions and she had not double-spaced), he instructed her to re-write the exam.

- The Complainant stated that she was not able to access the College's online classroom management program, Blackboard, and that this prevented her from receiving all the assignments and information that the Professor distributed to the class.
- The Professor stated that while Complainant could see everything that was posted to Blackboard, she could not download or open attachments posted on Blackboard. The Professor stated that once he learned about this glitch, he started emailing the Complainant the attachments and information he posted on Blackboard.
- A review of the emails between the Complainant and Professor showed that starting on June 21, 2011 through July 26, 2011, the Professor emailed the Complainant course assignments and information.
- OCR interviewed a student who was enrolled in the summer 2011 Speech course with the Complainant. The student stated that while the Professor used Blackboard to post assignments and documents, he also made the same documents available in class. The Professor also announced at the end of each class the assignments for the next class.
- Complainant stated she was not sure if she ever discussed with her DSP&S counselor about not completing the Speech course in the fall semester, but that DSP&S was aware of it since it gets her grades.
- Complainant stated that she went to see the Dean of Counseling at DSP&S on or about July 6, 2011 to request Blackboard as an accommodation, including emails, and all the accommodations previously approved by DSP&S.
- The Dean of Counseling stated that accommodations are usually in effect for the semester that they are approved and that the student must meet with a DSP&S counselor or other staff member to renew their accommodation eligibility. The Dean of Counseling stated that Complainant had not met with her counselor with regard to the summer Speech course and the accommodations she would need for the course. Dean of Counseling stated that DSP&S was not aware that Complainant had taken an "incomplete" in the fall 2010 Speech class or that she

was attempting to address an incomplete over the summer. The Dean of Counseling stated that when Complainant came to see her on July 6, 2011, the Complainant did not know about the written contract and that the Complainant told her she agreed to take the entire course over.

- The Dean of Counseling stated that during their meeting, the Complainant did not ask for and they did not discuss anything related to Complainant's accommodations. The Dean of Counseling stated that the Complainant's real concern was with the Professor's lack of responsiveness to her requests for access to Blackboard. The Dean of Counseling stated she provided the Complainant with the student handbook for information on grievances against an instructor and referred her to see the Dean of Fine Arts, the Professor's supervisor.
- The Dean of Counseling stated that for a notetaker, the student must present a form from DSP&S (which is provided to the student) to the professor, who then makes a request for volunteers to take notes. The notetakers are not paid, but are provided the carbon copy paper.
- The Dean of Counseling stated that for testing taking services, the student must inform DSP&S five days before about the exam and that the Professor is supposed to leave the exam at the test center for the student.
- The Dean of Counseling stated she did not know and was not told by the Complainant that she had not received her testing accommodations in the summer Speech course.
- The counseling records from DSP&S showed an entry made on July 6, 2011 with notes indicating that Complainant was referred to "[Dean of Fine Arts] to discuss her request for course information from [the Professor] since she is working on her incomplete grade." The counseling records did not reflect any other substantive meetings between Complainant and the DSP&S office.
- The Dean of Fine Arts spoke to the Complainant on or about July 6, 2011. He stated that Complainant's main concern was that she was not getting all the information she needed for the class, even after she had informed the Professor that she was not able to access Blackboard. The Dean of Fine Arts told her he would speak to the Professor, which he did.

In the fall 2010 semester, the Complainant was authorized by DSP&S to receive two accommodations: notetaking and extended time on tests in a low distraction environment. The Complainant did not complete one of her fall courses, Speech

(b)(6),(b)(7)(C) [redacted] and attempted to complete the course during the summer 2011 session. While the Complainant attended the summer course, she was not officially enrolled at the College and, initially, did not report her summer attendance to DSP&S. Under these unusual circumstances, OCR had to first determine whether she was entitled to any

accommodations at all. OCR concluded that because the Complainant needed to complete the course, and the Professor accepted her into the summer class as a fully participating student, she participated in a “program or activity.” Additionally, because the Professor was the same Professor who she had in the preceding fall semester, he was on notice of her accommodation needs. However, as explained below, OCR took the fact that there is conflicting evidence as to whether the Complainant informed the DSP&S of the failure to implement her accommodations into account in determining whether the College had failed to provide the Complainant with necessary accommodations.

With respect to notetaking, the College’s notetaker policy requires that DSP&S provides a letter that the student can give to the teaching faculty for the faculty member to solicit a volunteer notetaker for students with disabilities.² This approach to notetaking required communication and cooperation between the Complainant and her Professor, in order for volunteer notetakers to be identified. In the summer Speech course, the Complainant requested that the Professor solicit a notetaker for the class and the Professor failed to request a volunteer notetaker for the Complainant as he should have. However, the Complainant was able to find on her own a notetaker and was able to tape record the classes, which allowed the Complainant to effectively access the course.

It is not the responsibility of students to persuade their instructors to comply with disability law, but it is not unreasonable to expect that a student let the entities with that responsibility know when approved accommodations are not being delivered. In this case, there is no evidence to suggest that if the Complainant had informed the DSP&S office of the Professor’s failure to solicit student volunteers, it would not have promptly taken the steps necessary to obtain a notetaker for the Complainant.

Because the Complainant secured a notetaker, taped the lectures, and appears to have not raised this particular issue with DSP&S personnel, OCR finds insufficient evidence to establish noncompliance.³ With respect to the testing accommodation of a “noise-reduced environment,” the evidence shows that the Complainant did not take the mid-term exam in a DSP&S authorized quiet location, but she was provided by the Professor another reduced noise environment, an empty office. OCR did not uncover evidence that this alternate environment was in some material manner not as conducive to concentration as the sites normally used by DSP&S. In addition, there is no evidence

² Colleges may rely on unpaid volunteers for notetaking only so long as such an approach to notetaking works. If students or professors report that they are unsuccessful in securing an unpaid volunteer, the college will have to take those additional measures necessary to obtain notetakers, including offering compensation to the notetaker.

³ Nevertheless, OCR encourages the College to recognize its obligation to work with its DSP&S students and faculty on the importance of the communicating with each other at the first sign that an approved accommodation is not being provided.

that at the time of the mid-term exam, the Complainant identified to the Professor any characteristic of the alternate office which would hinder her ability to take the examination.

As for the accommodation of extra time on the exam, there is conflicting evidence as to what occurred. The evidence shows, however, that at the end of the exam, the Professor gave the Complainant the opportunity to re-write the exam, after the Professor noticed that she had failed to follow the instructions on the exam. As she was provided and took advantage of this opportunity, a preponderance of the evidence shows that, at least ultimately, she received as much extra time as she had been authorized to receive. The objective of extra time on an exam is to make sure that the exam measures the test-taker's aptitude and knowledge rather than the impact of his/her disability. Clearly, by giving the Complainant extra time to compensate for misread directions, the Professor was acting in a manner consistent with that objective. As to the Complainant's allegation that the Professor did not provide instructions beyond those given to other students on taking the mid-term exam, this was not an approved accommodation for the Complainant.

Additionally, because there is conflicting evidence as to what was discussed during the meeting between the Complainant and the Dean of Counseling on July 6, 2011, it is not clear if the College was aware that the Complainant thought the testing accommodations were not being provided to her.

In sum, OCR reviewed each of the accommodations authorized by DSP&S in the previous fall semester, taking into account the unusual circumstances of the Complainant's summer school attendance and the limited and conflicting evidence of her involvement with DSP&S regarding her accommodations. We concluded that, through her own initiative and that of her Professor, in substance, she received those accommodations to which she was entitled.

In addition, the Complainant alleged that she did not have access to Blackboard, a Web-based course management system, used by the Professor and other college faculty. This problem arose because the College's course management system is not designed to reach an attending but non-enrolled student or at least blocks such persons from opening any attachments. We concluded that the Complainant was entitled to the information provided to all the other students in the class, not as a matter of reasonable accommodation, but as a matter of equal treatment. All other students enrolled in the summer Speech course had access to the Blackboard program.

Here too, OCR concluded that the circumstances dictated that OCR look at substance over form. Clearly, the Complainant needed to have access to information provided on Blackboard during the summer course. However, the Professor, once notified that the Complainant could not open attachments through Blackboard, provided her with the course materials and information via email. While the Complainant may believe that the Professor failed to provide her with "everything," the email communications between the

Professor and the Complainant showed that he emailed her all of the assignments. The evidence further showed that while the Professor used Blackboard to list assignments and post documents, he also announced the assignments for the next class at the end of each class and provided the documents and materials during class (for those who did not have them). Therefore, even though the Complainant did not have complete access to Blackboard like the enrolled students, she was able to access the course assignments through the emails the Professor sent her, the documents he distributed during class, and the announcements the Professor made at the end of class. We also note that the Complainant only needed to accomplish three assignments in order to complete her incomplete grade and that she did receive the announcements and information about these particular assignments. OCR finds that the Complainant was not denied the opportunity to participate in the Speech course because she was provided the course information through other, equally effective, means. Therefore, OCR finds that there is insufficient evidence to show that the College was in noncompliance with regards to either denial of accommodation or equal treatment under Issue One.

Issue Two: Whether the College retaliated against the Complainant after she filed an internal complaint alleging a Professor graded her more harshly and issued her failing grades for assignments she state she was never given.

The Section 504 regulations, at 34 C.F.R. § 104.61, incorporate 34 C.F.R. § 100.7(e) of the regulations implementing Title VI of the Civil Rights Act of 1964 and prohibit colleges and universities from intimidating, or retaliating against individuals because they engage in activities protected by Section 504. The Title II regulations, at 28 C.F.R. § 35.134, similarly prohibit intimidation, coercion, or retaliation against individuals engaging in activities protected by Title II.

When OCR investigates an allegation of retaliation, it examines whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the College, under circumstances that suggest a connection between the protected activity and the adverse action. If a preliminary connection is found, OCR asks whether the College can provide a nondiscriminatory reason for the adverse action. OCR then determines whether the reason provided is merely a pretext and whether the preponderance of the evidence establishes that the adverse action was in fact retaliation.

The investigation showed the following:

- The Complainant stated that because she did not get all the assignments through Blackboard, she had to get the documents during class, in which the Professor would “sporadically” say “shame, shame, shame” to the students who came up to get the documents. Complainant believed he was directing this statement towards her specifically.

- The Professor denied directing the words “shame, shame” at the Complainant. The Professor stated that Complainant was given the opportunity to improve on her fall 2010 semester grade during the summer course. Even though Complainant only needed to complete three assignments for the course, she had the opportunity to make-up the hours she missed and improve her score on the exam and the assignments that were missing for her fall 2010 grade. He stated he accepted the assignments that she turned into him during the summer and for the assignments in which she had a better grade than from the fall semester, he would give her the better grade of the two. Professor stated after her work for the summer 2011 class, she had a grade of 85% with two out of the three speeches outstanding.
- OCR reviewed with the Professor the attendance record of the Complainant for the summer Speech course. The record showed that Complainant did not attend the classes on June 30, 2011 and July 12, 19, 21, 26, 2011 due to medical reasons.
- OCR interviewed a student who was enrolled in the summer 2011 Speech course with the Complainant. The student confirmed that the Professor made the comment “shame, shame, shame” when students came up to pick-up the documents in class, but that the comment was not directed at any one student; it was directed at the class in general. The student stated that the comment “shame, shame, shame” was an inside joke with the students in the course who were on the debate team with the Professor. The student stated the Professor would make this same comment to members of the debate team when someone referenced the wrong evidence during a debate.

While the Complainant engaged in the protected activity of verbally complaining of discrimination by the Professor and the inability to access his course due to her disability, the evidence does not support that she experienced any adverse treatment as a result of these complaints. The Complainant described to OCR two ways in which she experienced adverse treatment. First, she alleges that the Professor graded her more harshly and gave her failing grades for assignments she did not know about. The Complainant was taking the summer course to complete her previous “incomplete” grade. According to the written contract provided to the Complainant, she had three assignments to accomplish in order to complete in the course. While the Complainant stated to OCR that she did not know that she only needed to complete three assignments prior to her meeting with the Dean of Counseling, she should have known based on the terms of the written contract and certainly once she had her mid-course meeting with the Dean. Unfortunately, by the end of the summer semester, the Complainant had only completed one of the three remaining assignments. Moreover, for the additional assignments that she did complete during the summer course, the Professor stated he only counted the grade if it was better than the grade than she had received on the assignment in the fall 2010 semester. Furthermore, the evidence

shows that at the time the Complainant stopped attending the course she had a grade of 85 percent.

To OCR, rather than being the object of retaliation, it appears that the Professor sought to give the Complainant the “benefit of the doubt” in his grading practices. The primary causes of the “harsh” grades that she received were her failure to accomplish the terms of her contract and incomplete attendance. Both of these shortcomings may well be related to the impact of her disability⁴ but neither reflects a failure on the part of the College. Therefore, there is insufficient evidence that her complaints of discrimination in her meetings with the Dean of Counseling and Dean of Fine Arts lead to the Professor grading her more harshly in the course.

The Complainant also alleges that the Professor retaliated by making the comment of “shame, shame, shame,” towards her in class when she went to retrieve documents she did not have. The evidence, however, shows that the Complainant attended two classes after the meeting with the Dean of Counseling and the Dean of Fine Art, but there is insufficient evidence to show that the comment was made during these two classes in which she was present. The comment may have been made prior to her meetings the Deans, and thus, the comment could not have been retaliatory in nature as the protected activity had not yet occurred. More important, the evidence shows that the comment was not directed at the Complainant in particular. In fact, the evidence shows that the Professor made the comment in front of the class, to any student who had to get up to get a copy of the documents for class. In addition, it appears that the comment was a part of a running joke between the Professor and the students in the class who were members of the debate team. The Professor would make the comment of “shame, shame, shame” whenever one of the debaters made a bad reference to the evidence. Therefore, the Professor’s comment of “shame, shame, shame” was a reference to the debate team and not directed at the Complainant for meeting with and complaining to the Dean of Counseling and Dean of Fine Arts. On these grounds, OCR finds that there is insufficient evidence to show that the College is non-compliant with regards to Issue Two.

In summary, OCR finds that there is insufficient evidence to support a finding of non-compliance with Section 504 and Title II with respect to the issue investigated. OCR is closing this case as of the date of this letter and the Complainant is being notified by concurrent letter.

⁴ OCR recognizes that formal or public speaking may be a particularly challenging activity for someone with an anxiety disorder. In the course of investigating this matter, the Professor identified some creative approaches to making a speech class more accessible to such individuals. OCR encourages the College to engage with the Professor, Student and DSS in consideration of implementing the alternate accommodations suggested by the Professor and allowing the Complainant to complete her remaining assignments using such accommodations.

This letter is a letter of finding(s) issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

OCR routinely advises recipients of Federal funds and public educational entities that Federal regulations prohibit intimidation, harassment or retaliation against those filing complaints with OCR and those participating in the complaint resolution process. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related records on request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR would like to thank you, your staff, and (b)(6),(b)(7)(C) for their cooperation and courtesy in resolving this matter. If you have any questions about the complaint, please contact Nancy Sablan, Equal Opportunity Specialist at (415) 486-5549, or Kana Yang, Civil Rights Attorney at (415) 486-5382.

Sincerely,



Zachary Pelchat
Team Leader



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE

April 27, 2011

Dr. Wim Wiewel
President
Portland State University
P.O. Box 751
Portland, Oregon 97207-0751

Re: Portland State University
OCR Reference No. 10112009

Dear Dr. Wiewel:

This is to inform you that the U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the above-referenced discrimination complaint against the Portland State University (university). The complaint alleged that the university discriminates, on the basis of disability, against disabled students who are accompanied by service animals and companion animals by charging them non-refundable housing pet fees.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973, and title II of the Americans with Disabilities Act of 1990, and their implementing regulations.

The university has agreed to take the actions set forth in the enclosed Voluntary Resolution Agreement (agreement), which, when fully implemented, will resolve the issue raised by the complaint. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by August 1, 2011.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Levin Karovsky, Equal Opportunity Specialist, by telephone at (206) 607-1620, or by e-mail at levin.karovsky@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary D. Jackson".

Gary D. Jackson
Director
Seattle Office

Enclosure: Voluntary Resolution Agreement

cc: (b)(7)(C) Interim Assistant General Counsel

915 2ND AVE., SUITE 3310, SEATTLE, WA 98174-1099
www.ed.gov

VOLUNTARY RESOLUTION AGREEMENT

I. INTRODUCTION

Portland State University (University) and the U.S. Department of Education, Office for Civil Rights (OCR) enter into this agreement to resolve the allegation in OCR Reference No. 10112009, a complaint filed with OCR under section 504 of the Rehabilitation Act of 1973 (Section 504) and title II of the Americans with Disabilities Act of 1990 (Title II).

II. GENERAL PROVISIONS

- A. This agreement resolves the allegation in OCR Reference No. 10112009 that the University discriminates, on the basis of disability, against disabled students who are accompanied by service animals and companion animals by charging them non-refundable housing pet fees. This agreement does not constitute an admission by the University of any violation of Section 504, Title II, or any other law.
- B. This agreement will be effective when signed by the authorized representatives of both parties.
- C. OCR agrees to discontinue its investigation of OCR Reference No. 10112009 based upon the University's commitment to take the actions specified in this agreement which, when fully implemented, will resolve the allegation in this case.
- D. In the event the University fails to implement any provision of this agreement, OCR will resume its investigation of the complaint or take other appropriate measures within its authority to effect compliance with Section 504 and Title II.
- E. By signing this agreement, the University agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the University understands that during the monitoring of this agreement, if necessary, OCR may visit the University, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the University has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 CFR 104.4(a) and 104.43, and Title II at 28 CFR 35.104, 35.130(a), 35.136, which were at issue in OCR Reference No. 10112009.

- F. OCR will not close the monitoring of this agreement until OCR determines that the University has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 CFR 104.4(a) and 104.43, and Title II at 28 CFR 35.104, 35.130(a) and 35.136, which were at issue in OCR Reference No. 10112009.

III. RESOLUTION PROVISIONS

A. Housing Policies and Procedures

1. By September 15, 2011, in consultation with OCR, the University will review and revise its housing policies and procedures to ensure that they are consistent with the Title II regulation at 28 CFR 35.136(h), which prohibits public entities, such as the University, from asking or requiring students with disabilities, who are accompanied by service animals, and who have identified themselves to the University as having disabilities in accordance with the University's procedures, to pay a surcharge, even if students accompanied by pets are required to pay fees.
2. By September 15, 2011, in consultation with OCR, the University will review and revise its disability policies and procedures to ensure that it incorporates a definition of service animals that is consistent with the Title II regulation at 28 CFR 35.104 and 35.136.
3. By September 15, 2011, the University will review and revise its online and print communications to ensure that they reflect any revisions to the housing and disability policies and procedures.

B. Notice

1. By September 15, 2011, the University will hold a meeting for University employees who implement the housing and disability policies and procedures. The meeting will provide these University employees the opportunity to: (a) receive an explanation of the Title II provisions regarding service animals, including the prohibitions against surcharges, and review any revisions to the University's housing and disability policies and procedures made pursuant to section III.A; (b) ask questions and obtain answers regarding the Title II provisions and the University's housing and disability policies and procedures

regarding service animals; and (c) be notified of the title and contact information of the University employee or employees who are designated to address questions or complaints regarding the revised housing and disability policies and procedures.

2. By September 15, 2011, the University will provide written notice to all students with disabilities, who have identified themselves to the University as having disabilities in accordance with the University's procedures, and who have requested University housing, of the revised housing and disability policies and procedures.

IV. REPORTING PROVISIONS

A. Housing Policies and Procedures

1. By August 1, 2011, pursuant to sections III.A.1 and III.A.2, the University will provide OCR with copies of its revised housing and disability policies and procedures.
2. By December 1, 2011, the University will provide OCR with a report demonstrating that it has adopted and implemented the revised housing and disability policies and procedures, including but not limited to: copies of the final policies and procedures, and announcements of their adoption and implementation.

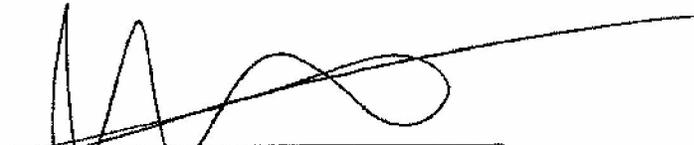
B. By December 1, 2011, the University will provide OCR with a copy of any of the revised online and print materials that it revised pursuant to section III.A.3.

C. By December 1, 2011, the University will provide OCR with a report regarding its actions that it has taken pursuant to section III.B.1 of the agreement. The report will include, but is not limited to: the date, duration, and description of the meeting; a list of the employees, by name and title, who attended the meeting; a copy of the meeting minutes; and copies of the meeting handouts.

D. By December 1, 2011, the University will provide OCR with a report regarding the notification actions that it has taken pursuant to section III.B.2 of the agreement. The report will include, but is not limited to: a copy of the written notice; a description of where and when the notice was distributed; and

documentation that the notice was provided to students with disabilities who have identified themselves to the University as having disabilities in accordance with the University's procedures, and who have requested University housing.

Signed:



Dr. Wim Wiewel
President
Portland State University

4/26/11
Date



Gary D. Jackson
Director
Office for Civil Rights, Seattle Office
U.S. Department of Education

4-26-11
Date



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
SEATTLE OFFICE

September 8, 2011

Dr. Wim Wiewel
President
Portland State University
P.O. Box 751
Portland, Oregon 97207-0751

Re: Portland State University
OCR Reference No. 10112060

Dear Dr. Wiewel:

The U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the referenced complaint against Portland State University. In the complaint, it is alleged that:

1. the university discriminates against disabled students who are accompanied by service dogs, by prohibiting them from living in residential housing with carpets; and
2. during the 2010-2011 school year, the university discriminated against a student on the basis of disability, by: (a) requiring her to place a sign at the entrance of her university apartment indicating that she has a dog; and (b) failing to address her concerns of disability-based harassment in an appropriate and timely manner.

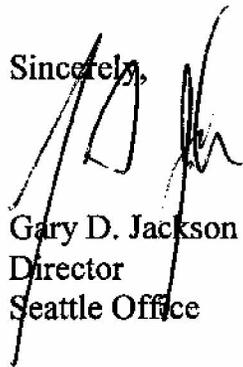
OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973 and title II of the Americans with Disabilities Act of 1990, and their implementing regulations. The university has agreed to take the actions set forth in the enclosed Voluntary Resolution Agreement (agreement), which, when fully implemented, will resolve the issues raised by the complaint. OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied.

915 2ND AVE., SUITE 3310, SEATTLE, WA 98174-1099
www.ed.gov

Page 2 - OCR Reference No. 10112060

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, you may contact Jennifer Kuenzli, equal opportunity specialist, by telephone at (206) 607-1675, or by e-mail at jennifer.kuenzli@ed.gov.

Sincerely,



Gary D. Jackson
Director
Seattle Office

Enclosure: Voluntary Resolution Agreement

cc: (b)(7)(C) Assistant General Counsel

VOLUNTARY RESOLUTION AGREEMENT

I. INTRODUCTION

Portland State University (university) and the U.S. Department of Education, Office for Civil Rights (OCR) enter into this agreement to resolve the allegations in OCR Reference No. 10112060, which was a complaint filed with OCR under section 504 of the Rehabilitation Act of 1973 (Section 504), and title II of the Americans with Disabilities Act of 1990 (Title II).

II. GENERAL PROVISIONS

- A. This agreement resolves the allegations in OCR Reference No. 10112060 and does not constitute an admission by the university of any violation of Section 504, Title II, or any other law.
- B. This agreement will be effective when signed by an authorized representative of the university.
- C. OCR agrees to discontinue its investigation of OCR Reference No. 10112060 based upon the university's commitment to take the actions specified in this agreement which, when fully implemented, will resolve the allegations in this complaint.
- D. In the event the university fails to implement any provision of this agreement, OCR will resume its investigation of the complaint or take other appropriate measures within its authority to effect compliance with Section 504 and Title II.
- E. The university agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, the university understands that during the monitoring of this agreement, if necessary, OCR may visit the university, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the university has fulfilled the terms of this agreement and is in compliance with the regulations implementing Section 504 at 34 CFR 104.4, 104.43, 104.45, and 104.61, and Title II at 28 CFR 35.107, 35.130, and 35.136, which were at issue in OCR Reference No. 10112060.
- F. OCR will not close the monitoring of this agreement until OCR determines that the university has fulfilled the terms of this agreement and is in compliance

Page 2 – OCR Reference No. 10112060

with the regulations implementing Section 504 at 34 CFR 104.4, 104.43, 104.45, and 104.61, and Title II at 28 CFR 35.107, 35.130, and 35.136, which were at issue in OCR Reference No. 10112060.

III. RESOLUTION PROVISIONS

A. Policies and Procedures

1. By November 15, 2011, in consultation with OCR, the university will review and revise, as necessary, its housing policies and procedures to ensure that they are consistent with Section 504 and Title II. Specifically, the university will ensure that:
 - (a) It makes available to disabled students, who are accompanied by service animals and who have identified themselves to the university as having disabilities in accordance with the university's procedures, comparable university housing as it makes available to others, including housing with carpets; and
 - (b) It does not limit disabled students in their enjoyment of their university housing by requiring them to disclose their disability to other students, such as by requiring disabled students who are accompanied by service animals to place signage visible to the public at their university residence disclosing that they have service animals.
2. By November 15, 2011, in consultation with OCR, the university will review and revise, as necessary, its disability policies and procedures to ensure that:
 - (a) The university has established grievance procedures that incorporate due process standards and that provide for the prompt and equitable resolution of disability discrimination complaints, including complaints of disability harassment occurring in university housing.
 - (b) The university promptly and effectively investigates students' complaints of disability harassment, including complaints of disability harassment occurring in university housing.

Page 3 – OCR Reference No. 10112060

- (c) In situations where the university determines disability harassment has occurred, the university takes reasonable and effective corrective action to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring, including steps tailored to the specific situation.
 - 3. By December 15, 2011, the university will review and revise its online and print communications to ensure that they reflect any revisions made to the housing and disability policies and procedures pursuant to section III.A of the agreement.
- B. **Notice and Training**
 - 1. By December 15, 2011, the university will provide training to university employees who implement housing and disability policies and procedures, including resident assistants and employees of the Office of Housing and Residence Life and the Office of the Dean of Student Life staff. The training will include, but is not limited to:
 - (a) an explanation of the prohibitions against disability discrimination, including disability harassment, and protections for disabled individuals with service animals provided under Section 504 and Title II;
 - (b) an explanation of the university's disability discrimination grievance procedures and a description of the range of corrective actions that are available if the university determines disability harassment occurred, including appropriate sanctions for students and other residents who are found to have perpetrated disability harassment in university housing; and appropriate remedies for students, who are found to be the victims of disability harassment in university housing (e.g., in situations where a student requests such actions, granting a request to relocate to comparable university housing at no expense to the student or releasing a student from his/her housing contract without penalties);
 - (c) a review of any revisions made to the university's housing and disability policies and procedures pursuant to section III.A of the agreement, including any changes to employee responsibilities;

Page 4 – OCR Reference No. 10112060

- (d) the name, title, and contact information of the university employee who is responsible for responding to and resolving complaints of disability discrimination, including disability harassment and service animal complaints; and
 - (e) the name, title, and contact information of the university employee(s) who are responsible for responding to questions about any revised housing and disability policies and procedures.
2. By December 15, 2011, the university will provide written notice to all students with disabilities who have identified themselves to the university as having disabilities in accordance with the university's procedures, and who have requested university housing. The notice will include:
- (a) a description of any revised housing and disability policies and procedures and an explanation of where students may view or obtain copies of the policies and procedures;
 - (b) the name, title, and contact information of the university employee who is responsible for responding to and resolving complaints of disability discrimination, including disability harassment and service animal complaints; and
 - (c) the name, title, and contact information of the university employee(s) who are responsible for responding to questions about the housing and disability policies and procedures.

C. Individual Remedies

1. By October 15, 2011, the university will: (a) conduct an effective and impartial investigation of all the complaints of disability harassment raised by the student, who is the subject of this complaint, during the 2010-2011 academic year; (b) provide a written response to the student that informs her of the outcome of the investigation; and (c) if instances of disability harassment are identified, take steps reasonably calculated to end any disability harassment, eliminate a hostile environment if one has been created, correct any discriminatory effects on the student, as appropriate, and prevent harassment from occurring again.

Page 5 – OCR Reference No. 10112060

2. By October 15, 2011, the university will credit the student's account in the total amount of Two Hundred Dollars (\$200) as reimbursement to the student for the moving expenses that she incurred during spring quarter 2011.
3. By December 15, 2011 the university will provide the student with written notice of any revised policies and procedures made pursuant to section III.A of the agreement. The notice will also identify the university employee responsible for resolving complaints of disability discrimination, including disability harassment and complaints about service animals.
4. By September 23, 2011, the university will notify the student in writing that the student has until the end of winter quarter 2012 to complete her final exam in Biology 102 for the incomplete in that course to change to a grade. The notice will explain the applicable university procedures for removing the incomplete grade, including providing the student the name and contact information for the university employee who will schedule her final exam.

IV. REPORTING PROVISIONS

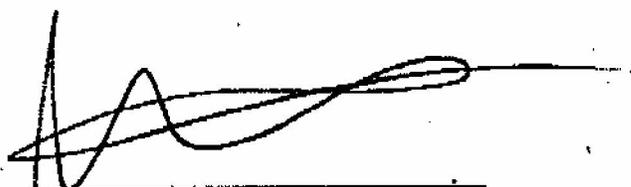
A Policies and Procedures

1. By October 15, 2011, pursuant to sections III.A.1 and III.A.2 of the agreement, the university will submit its housing and disability policies and procedures and -any proposed revisions to the policies and procedures for OCR's review. OCR will evaluate them and provide input, which the university will address.
 2. Within 30 days of receiving the approved revised housing and disability policies and procedures from OCR, the university will provide OCR with a report demonstrating that it has adopted and implemented them, including but not limited to, announcements of their adoption and implementation.
- B. By December 15, 2011, the university will provide OCR with a copy of the revised online and print materials that it revised pursuant to section III.A.3 of the agreement.

Page 6 - OCR Reference No. 10112060

- C. By January 15, 2012, the university will provide OCR a report on the training it provided pursuant to section III.B.1 of the agreement. The report will include, but is not limited to: the date, duration, agenda, and description of the training; a list of the employees by name and title, who attended the training, and copies of any handouts.
- D. By January 15, 2012, the university will provide OCR with a report regarding the notification actions that it has taken pursuant to section III.B.2 of the agreement. The report will include, but is not limited to: a copy of the written notice; a description of where and when the notice was distributed; and documentation that the notice was provided to students with disabilities who have identified themselves to the university as having disabilities in accordance with the university's procedures, and who have requested university housing.
- E. By January 15, 2012, the university will provide OCR with a report regarding the actions it has taken pursuant to section III.C of the agreement. The report will include, but is not limited to: a detailed description of the steps taken by the university to investigate and resolve the student's complaints of disability harassment; a copy of the university's response to the student regarding her complaints; a description of any corrective actions, including remedies provided to the student and actions designed to prevent harassment; documentation showing the student's refund for any moving expenses and forfeited money; a copy of the notice to the student regarding the revised policies and procedures; a description of the steps taken to resolve the student's incomplete grades from winter quarter 2011; and a copy of the student's academic transcript.

Signed:



Dr. Wim Wiewel
President
Portland State University

9-8-11

Date