



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

TIMOTHY C. J. BLANCHARD  
DIRECTOR  
NEW YORK OFFICE

January 24, 2011

Sister Elizabeth A. Hill, C.S.I., J.D.  
President  
St. Joseph's College  
245 Clinton Ave.  
Brooklyn, NY 11205

Re: Case No. 02-10-2171  
St. Joseph's College

Dear Sister Hill:

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 St. Joseph's College. The complainant alleged that the College discriminated against her client (the Student) because it regarded her as disabled. Specifically, the complainant alleged that from January 8, 2010, to the present, the College prohibited the Student from attending classes or being present on campus (Allegation 1). Additionally, the complainant alleged that the College failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, as required by Section 504 of the Rehabilitation Act of 1973 (Allegation 2).

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 federal 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 staff and administrators, including: the Dean of Students; the Executive Director for the Office of Career, Development, Wellness and Disability Services (the Executive Director of Disability Services); the Assistant Dean of Students (the Assistant Dean);<sup>1</sup> and the Academic Dean of the School for Arts and Sciences (the Academic Dean). OCR also reviewed documentation the complainant and the College submitted. OCR made the following determinations.

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<sup>1</sup> During academic year 2009-2010, the Assistant Dean served in the position of Director of Student Activities and Co-Curricular Programs.

OCR determined that in fall 2008, the Student transferred to the College's Brooklyn campus as a fulltime undergraduate student. The Student did not identify herself as a student with a disability by registering with the College's Office of Career, Development, Wellness and Disability Services prior to or during her enrollment.

Allegation 1

The complainant alleged that because the College regarded the Student as disabled, it did not provide her with the same process it provides to non-disabled students when it suspended her from campus. OCR determined that the College initially removed the Student from campus following an incident on November 16, 2009, wherein the Student grabbed and tried to kiss another student (Student 2), refused to let go of him, insisted that she was in love with and married to him, and had to be physically removed by a security guard (Incident 1).<sup>2</sup> On November 23, 2009, the Dean of Students permitted the Student to return to campus, after receiving a letter from the Student's psychiatrist giving her medical clearance to return.<sup>3</sup> The Dean of Students stated that she advised the Student that upon her return she could not contact Student 2. On November 30, 2009, the Student grabbed Student 2 and refused to let go, and the College's Director of Security had to physically separate the Student from Student 2 (Incident 2).<sup>4</sup> Following Incident 2, the Student was transported by ambulance to a hospital.

OCR determined that the College's Behavioral Assessment Committee (BAC) convened an emergency meeting on December 1, 2009, the day following Incident 2, to determine whether the Student should be allowed to return to the College.<sup>5</sup> OCR determined that the Student was not notified in advance of the BAC meeting and was not given the opportunity to present information or witnesses on her behalf. During the meeting, the BAC discussed Incidents 1 and 2, and reviewed statements from College faculty and staff regarding the Student's behavior during the two weeks prior.<sup>6</sup> The BAC also reviewed the letter from the Student's psychiatrist that the Student submitted to the Dean of Students in support of her return after Incident 1. According to the meeting minutes, the BAC recommended that the Student not be permitted to return to the College and should be placed on "emergency suspension," pursuant to the policy found in the College's Student Handbook.

<sup>2</sup> Immediately following Incident 1, the Associate Director of the College's Counseling Office spoke with the Student for two hours and determined that the Student was unable to distinguish between reality and fantasy, and appeared delusional. The Student agreed to leave campus in an ambulance and admitted herself to a hospital, where she was seen and released that same day.

<sup>3</sup> Following Incident 1, in a letter dated November 20, 2009, the Dean of Students advised the Student that she could not return to the College unless she submitted a letter from a board certified psychiatrist deeming her "safe to return."

<sup>4</sup> The Executive Director of Disability Services informed OCR that he spoke with the Student immediately following Incident 2, and observed that she was behaving incoherently; alternately laughing, crying and singing. He stated that the Student kept insisting that she and Student 2 were meant to be together, and also stated that she was not taking her medication.

<sup>5</sup> On the College's Brooklyn campus, the BAC includes the Executive Director of Disability Services, the Dean of Students, the Assistant Dean and the Associate Director of the Counseling Office. Other staff members participate on an as-needed basis.

<sup>6</sup> On November 24 and 25, 2009, a College professor (the Professor) observed the Student following Student 2 and attempting to talk to him. The Professor notified the Dean's office and counseling office of the incidents, but no action was taken against the Student.

In a letter, dated December 1, 2009, the Dean of Students informed the Student that she was imposing an “emergency suspension...under the guidelines of the St. Joseph College Student Handbook, p. 36 [sic].”<sup>7</sup> The letter further stated that the Student would be suspended for ten school days, during which time “[her] case will be reviewed and [she would] be notified of the results of said review.”

OCR determined that the guidelines for “emergency suspension” are found in the College’s Student Handbook, under the heading “Emergency Suspensions in Non-Academic Matters.” Pursuant to these guidelines, the Dean of Students, the Academic Dean or their delegates may summarily suspend a student in emergency or extraordinary situations for up to ten days. The policy further provides for “notice and opportunity for denial and/or explanation...as soon as feasible” after the suspension, and states that the Student Judicial Committee (SJC)<sup>8</sup> will convene and conduct a hearing during the ten-day period of the student’s suspension. The policy further states that the SJC’s recommendation must be approved by a majority of the President’s Council;<sup>9</sup> and that a student may appeal the decision to the College President. The College’s “Due Process Guidelines,” also set forth in the Student Handbook, provide that a student who is the subject of a hearing receive notice, including names of witnesses expected to testify; assistance by an advisor of their choosing; and the opportunity to testify, present evidence and witnesses, and question adverse witnesses.

OCR determined that although the Dean of Students informed the Student that the College was utilizing its guidelines for “emergency suspension,” the College instead used a separate process, which involved review by the BAC. College staff and administrators advised OCR that the BAC is a committee whose role is to discuss and determine how the College should address “problematic student behaviors”; however, OCR determined that the College has only used the BAC to remove students from campus in two other instances, and both were to address the behavior of students the College believed might have possible mental health conditions. The Dean of Students informed OCR that the College elected to use the BAC process instead of process for “emergency suspension” to keep the matter “private,” because of the “mental health aspect” of the situation.

OCR determined that the guidelines for “emergency suspension” make no mention of the BAC process, and there is no written policy or procedure governing the BAC’s operation. OCR also determined that there is no information about the BAC in any of the College’s published materials, including the Student Handbook for school year 2009-2010, or on the College’s website. In addition, OCR determined that the Dean of Student’s letter to the Student, dated December 1, 2009, did not include any information about the BAC process. Further, the letter did not advise the Student that the BAC had already met to review whether she could return to the College, nor did it include any information on how to the Student could appeal the BAC’s decision. Further, OCR determined that the College did not conduct a hearing before the SJC as

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<sup>7</sup> OCR determined that the guidelines appear on page 39.

<sup>8</sup> The SJC consists of two faculty members, two students elected by the Student Senate, the head of student government (*ex officio*) and the Dean of Students.

<sup>9</sup> The President’s Council consists of the College President (who cannot vote because s/he ultimately will decide any appeal), three academic deans, the Vice President for Enrollment, the Vice President for Institutional Technology, the Vice President for Institutional Advancement, the Chief Fiscal Officer and the Provost.

stated in the procedure for “emergency suspensions”; nor did it advise the Student that she could request a hearing before the SJC. The Dean of Students stated that she did not believe such a request would have been appropriate to discuss the Student’s mental health, as the SJC includes student members.

On January 8, 2010, the Student contacted the Academic Dean to inquire about returning to the College. The Academic Dean contacted the Dean of Students, who called another BAC meeting on January 8, 2010. The College did not notify the Student of the BAC meeting, nor did it provide her with an opportunity to present information or witnesses on her own behalf. The BAC again determined that it was not safe for the Student to return to the College, based on the information it had reviewed at its previous meeting on December 1, 2009. In a letter, dated January 8, 2010, the BAC notified the Student of its determination that she had violated Rules No. 1<sup>[10]</sup>, No. 7<sup>[11]</sup> and No. 9<sup>[12]</sup> of the Student Code of Conduct and that it was not safe for her to return to the College. The letter did not include any information on how to appeal the BAC’s decision. Although the letter advised the complainant that the BAC had concluded that she violated the Student Code of Conduct, OCR determined that the College deviated from its usual procedure for addressing serious violations of the Student Code of Conduct, set forth in a policy entitled, “Suspension in Non-Academic Matters,” which is also in the Student Handbook. This policy is similar to the emergency suspension policy, described above, and contains similar procedural protections.<sup>13</sup> The College advised OCR that it did not use this process because the College determined that an SJC hearing would not be appropriate for addressing behaviors resulting from a mental health impairment.

In the interim, the Student contacted the Academic Dean to arrange to take final exams in her courses from the fall 2009 semester. In a letter, dated March 4, 2010, the BAC reiterated its decision and noted that pursuant to an arrangement with the Academic Dean, the Student would be permitted to appear on campus at the times and places designated; but did not provide information on how to appeal its decision barring her from returning to the College.

On or about March 23, 2010, the Student’s father called the Dean of Students and asked for the BAC to reconsider its decision again, stating that the Student was now taking her medication, and as a result, her condition had improved. OCR determined that the Dean of Students then consulted with each BAC member individually. The BAC decided to uphold its determination that the Student not be permitted to return to the College, stating that it did not have any new

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<sup>10</sup> Rule No. 1 provides:

A member of the College community shall not intentionally obstruct and/or forcibly prevent others from the exercise of their rights. Nor shall he/she interfere with the institution’s educational processes or facilities, or the rights of those who wish to avail themselves of any of the instructional, personal, administrative, recreational and community services.

<sup>11</sup> Rules No. 7 provides: Disorderly or indecent conduct on college-owned or controlled property is prohibited.

<sup>12</sup> Rule No. 9 provides: “No individual or group shall act in a manner or create a situation, which intentionally or recklessly endangers the mental or physical health of another, or involves the forced consumption of liquor or drugs for the purposes of initiation into or affiliation with any organization.”

<sup>13</sup> This policy provides that the Dean of Students cannot suspend a student prior to an SJC hearing. Rather, the Dean of Students must request a hearing before the SJC, and the SJC has 15 days to conduct the hearing. The SJC then makes a recommendation that has to be approved by a majority of the President’s Council. Students may appeal the decision to the President.

evidence indicating that it was safe for the Student to return. The BAC advised the Student of its decision, in a letter dated March 26, 2010. The letter did not include information about appeal rights, nor did it provide any information about steps the Student could take to effectuate her return to campus.

Pursuant to the regulation implementing Section 504, at 34 C.F.R. §104.3(j)(1), a person with a disability means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment. Based on statements made by College staff during interviews and in documentation, OCR concluded that the College regarded the Student as a person with a disability. Specifically, the College informed OCR that following Incident 1, College staff determined that the Student was unable to distinguish between reality and fantasy and appeared delusional; and following Incident 2, College staff observed that the Student was behaving incoherently, alternately laughing, crying and singing; insisting that she and Student 2 were meant to be together; and stating that she was not taking her medication. Further, College staff advised OCR that they believed the SJC process was not appropriate for the Student because of her mental health impairment.

The regulation implementing Section 504, at 34 C.F.R. § 104.43(a), provides that no qualified student 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 in any postsecondary education program. Based on the above, OCR determined that the College treated the Student differently, because of her perceived disability, regarding her suspension from the College. Specifically, OCR determined that the College utilized the BAC process to suspend the Student because College staff perceived her behavior as symptomatic of a mental health condition. OCR further determined that the College has only used the BAC process in situations where it perceives that a student's behaviors are the result of a mental health condition (even if undiagnosed). OCR determined that the College has used the "emergency suspension" process, which includes an SJC hearing, only when a student's behaviors do not appear to be the result of a mental health condition.<sup>14</sup> OCR determined that the BAC process did not provide the Student with any of the due process rights set forth in guidelines for "emergency suspension," including an "opportunity for denial and/or explanation" and did not afford the Student the opportunity for a hearing before the SJC. On each occasion that the BAC convened, the College failed to afford the Student the opportunity to present evidence or witnesses on her behalf, and also failed to provide the Student with information about any method by which she could appeal the BAC's determination. Further, OCR determined that the BAC process is not listed in any College publication.

On January 21, 2011, the College agreed to implement the enclosed resolution agreement, which addresses the above-mentioned compliance concerns. OCR will monitor implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation.

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<sup>14</sup> The Dean of Students informed OCR that in five years she has participated in three hearings before the SJC: one hearing involved suspension of a student for physically assaulting another student; one involved removal of a student from a resident hall for possession of marijuana; and one involved removal of a resident advisor for drinking alcohol.

Allegation 2

The complainant alleged that the College failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability, as required by Section 504 of the Rehabilitation Act of 1973. The regulation implementing Section 504, at 34 C.F.R. § 104.7(b), provides that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging disability discrimination.

OCR determined that page 48 of the College's Student Handbook has a section entitled "Grievance Procedure in Compliance with Section 504" which states: "Any student who believes he or she has been subject to discrimination on the basis of disability should read and follow the **'Procedures for Resolving Complaints Alleging Sexual and Other Forms of Unlawful Harassment and Alleged Discrimination'** on page 53 of this handbook"; however, OCR determined that the referenced procedure actually appears on page 46 of the Student Handbook. OCR further determined that the procedure contains a description of a complaint process (both formal and informal) for addressing complaints of discrimination, including disability discrimination; designated and reasonably prompt timeframes for the major stages of the complaint process; provides for the adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; and contains an assurance that the College will take prompt remedial action when a violation is found.

Based on the above information, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the College failed to adopt grievance procedures that provide for the prompt and equitable resolution of complaints alleging discrimination on the basis of disability. Accordingly, OCR will take no further action regarding Allegation 2; however, OCR determined that the College should correct the typographical error in the Student Handbook regarding the page referencing the grievance procedures.

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, but are not discussed herein. This letter is intended to address this individual OCR case. Letters of findings, such as this letter, 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 Student 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.

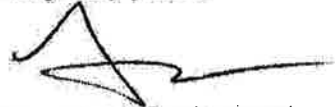
Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a

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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 Jackie Moran, Senior Compliance Team Attorney, at (646) 428-3788 or [Jackie.Moran@Ed.Gov](mailto:Jackie.Moran@Ed.Gov); or Matt Faiella, Compliance Team Attorney, at (646) 428-3766 or [Matt.Faiella@Ed.Gov](mailto:Matt.Faiella@Ed.Gov); or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [Felice.Bowen@Ed.Gov](mailto:Felice.Bowen@Ed.Gov).

Very truly yours,



Timothy C. J. Blanchard

Encl.

cc:

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## **RESOLUTION AGREEMENT**

**Saint Joseph's College  
OCR Case Number 02-10-2171**

In order to resolve the above-referenced complaint, Saint Joseph's College (the College) assures the U.S. Department of Education, New York Office for Civil Rights (OCR) that 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, it will take the following actions:

### **Action Item #1:**

By January 19, 2011, the College will send ("the Student") a letter that offers the Student the opportunity for a hearing pursuant to the process set forth in either its "Emergency Suspensions in Non-Academic Matters" policy or "Suspension in Non-Academic Matters" policy. The College will allow the Student at least 30 calendar days to respond to the offer, and if the Student accepts, the College will conduct the hearing within 10 business days of the Student's acceptance of the offer; and provide the Student with all of the due process rights set forth in the "Emergency Suspensions in Non-Academic Matters" policy or "Suspension in Non-Academic Matters" policy.

### **Reporting Requirements:**

- (a) By January 19, 2011, the College will provide OCR with a copy of its letter offering the Student the opportunity for a hearing pursuant to the process set forth in its "Emergency Suspensions in Non-Academic Matters" policy or "Suspension in Non-Academic Matters" policy. By February 15, 2011, the College will notify OCR of whether the Student accepted the College's offer.
- (b) If the Student chooses to avail herself of the process offered by the College pursuant to Action Item #1 above, 15 days following the hearing, the College will provide documentation to OCR with the result of the hearing; along with any supporting documentation.

### **Action Item #2:**

The College assures OCR that it will not utilize the Behavioral Assessment Committee (BAC) process as a separate process for students with disabilities and represents that it has not done so previously. The College will ensure that the BAC process is publicized and communicated to all students and that it continues to be applicable to both disabled and non-disabled students.



**Reporting Requirements:**

(a) With regard to the BAC process:

- i. by January 31, 2011, the College will provide OCR with a copy of the written policy regarding the BAC process, ensuring that the BAC process is equally applicable to disabled and non-disabled students and provides due process rights comparable to those in the "Emergency Suspensions in Non-Academic Matters" policy or the "Suspension in Non-Academic Matters" policy; and,
- ii. by March 31, 2011, the College will publish the BAC process in all publications for students that provide information about the "Emergency Suspensions in Non-Academic Matters" policy or the "Suspension in Non-Academic Matters" policy.

(b) By June 30, 2011, the College will provide OCR with documentation regarding any students referred for behavioral issues under the "Emergency Suspensions in Non-Academic Matters" policy; the "Suspension in Non-Academic Matters" policy; and the BAC process during academic year 2010-2011. This documentation will include a complete record of the proceedings conducted, including, but not limited to, all notices and letters provided to the student regarding the hearing (assuming that the student elects to have a hearing) and its outcome, all exhibits presented at the hearing, and a transcript of the hearing.

**Action Item #3:**

By March 31, 2011, the College will revise all publications that reference its grievance procedures, ensuring that these correctly cite the policy, with appropriate page references.

**Reporting Requirement:** By March 31, 2011, the College will submit to OCR copies of the publications revised pursuant to Action Item #3.

**Action Item #4:**

By April 15, 2011, the College will provide training to the Dean of Students, the Assistant Dean of Students, all staff in the Office of Career, Development, Wellness and Disability Services, members of the BAC and any other relevant staff and administrators regarding all policies and procedures affected by Action Items #1 and #2, above.

**Reporting Requirement:** By April 15, 2011, the College will provide OCR with documentation demonstrating that training was provided in accordance with Action Item

#4 above; including the name(s) and credentials of the trainer(s), the date(s) of the training, copies of any training materials distributed, and a list of all attendees.

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 regulations implementing Section 504, at 34 C.F.R. §§ 104.7 and 104.43, which were at issue in this case. The College 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 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 regulation implementing Section 504, at 34 C.F.R. §§ 104.7 and 104.43, which were at issue in this case.

1/19/2011  
Date

Sister Elizabeth A. Hill, M.S.  
Authorized Official  
Saint Joseph's College