



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION 1

33 ARCH STREET, SUITE 900
BOSTON, MASSACHUSETTS 02110-1491

JUL 18 2008

Dr. Joanne V. Creighton
President
Mount Holyoke College
50 College Street
South Hadley, Massachusetts 01075

Re: Complaint No. 01-08-2024

Dear President Creighton:

This letter is to inform you that the United States Department of Education (Department), Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint, which the Complainant filed on January 21, [REDACTED] against Mount Holyoke College (College). The Complainant alleged that the College discriminated against his daughter (Student), based on disability, when it required her to take medical leave for the Spring [REDACTED] semester because of behavior that is related to her disability. Based on our investigation of this matter, OCR has found insufficient evidence to show a violation of Section 504 of the Rehabilitation Act of 1973 or its implementing regulations, for the reasons provided below.

JURISDICTION AND LEGAL ISSUE

The complaint was filed under Section 504 of the Rehabilitation Act of 1973, and its implementing regulation at 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability in any program or activity receiving Federal financial assistance. The College is subject to the requirements of Section 504 because it receives Federal financial assistance from the Department.

Based on the allegation raised, OCR investigated the following legal issue:

- Whether the College discriminated against the Student on the basis of disability, in violation of 34 C.F.R. Section 104.43, when it required her to withdraw from the College, thereby excluding her from its benefits and opportunities.

In investigating this complaint, OCR reviewed and considered documents provided by the College, the Complainant and the Student. OCR also conducted interviews with the Complainant, the Student, and College staff and faculty who were involved in the decision to exclude the Student or the incidents leading to the exclusion of the Student.

SUMMARY OF FACTS

A. The Student's Experience

The Student is a twenty year-old female who began attending the College in September of [REDACTED]. In June of [REDACTED], the Student identified herself to the College as a student with disabilities, specifically a [REDACTED] disability and unspecified psychiatric disabilities. Although the Student had engaged in self-cutting behaviors and had had suicidal thoughts before college, she did not request any accommodations relating to those behaviors when she began at the College. She did not request any accommodations when she identified herself as disabled in June, but on December 7, [REDACTED], she requested extended time on tests in two courses and additionally requested a medical drop for a third course. The Student did not request accommodations based on her disability in either the Spring of [REDACTED] or Fall of [REDACTED] semesters.

The College said it first learned of the Student's self-injurious behavior when the Student met with the Associate Dean of Learning Skills on December [REDACTED] to discuss the extended time and medical drop accommodations. According to the Associate Dean's notes that were provided to OCR, at that December [REDACTED] meeting, the Student also told him that she was having thoughts about cutting herself.

At the beginning of the Student's sophomore year, an incident in which the Student discussed hurting herself occurred. On September 3, [REDACTED], at 2:00 p.m., the Student's Hall President paged the Dean-On-Call, reporting that the Student was upset about a relationship that had recently ended. The Student spoke of cutting herself, according to College records. The College had the Student consult with the on-call counselor, and the College decided to monitor the situation. The College also offered the Student counseling, but she declined the offer.

On September [REDACTED], the Student again approached the Hall President about suicidal thoughts and cutting herself. The College then put the Student in contact with the on-call counselor and the Student and the counselor met the following day, September [REDACTED]. On September [REDACTED] the Student approached the Hall President again about being unable to control the impulse to cut herself; that same day, at 12:20 p.m., the Student's mother contacted the College out of concern for the Student's mental health, according to documents from the College. The Student's mother stated that she was receiving phone calls from the Student's friends who were concerned for the Student's safety. On September [REDACTED], a faculty member of the College called the Dean of Students to say that the Student had been talking to her about being very depressed and about cutting herself. The faculty member reported that the Student showed her actual cuts and asked the faculty member for ointment to apply to the cuts. The faculty member also reported that the Student's friends at the College and the Student's mother expressed their concern for the Student to her. The Student also informed other College staff that she was cutting herself frequently, at least twice a day.

The Dean of Students and Director of Residential Life then met with the Student on September [REDACTED]. The Director of Residential Life and the Dean of Students both told OCR that the September [REDACTED] meeting focused on the fact that the Student was creating alarm amongst faculty and her friends, and that she needed to use appropriate supports, such as the College counseling

service, if she was having a difficult time. Accordingly, they talked to the Student about the need to put a "behavior agreement" in place due to her recent actions. The Dean of Students told OCR that, at the meeting, she told the Student that if she continued to disrupt the College community, it would jeopardize her standing at the College. The Director of Residential Life and the Dean of Students also informed OCR that they spoke with the Student's mother by phone during this meeting and discussed the behavior at issue, the need to remedy it, and the potential consequences of temporary withdrawal from the College if the Student failed to modify her behavior.

The Director of Residential Life and the Dean of Students informed OCR that they decided to institute a behavior agreement with the Student because of the numerous concerns about her behavior that had been expressed by various members of the College community over a short period of time. The Director of Residential Life said that although the Student had not violated any specific regulation or provision of the honor code, the Director wanted to institute a behavior agreement because of the disruptive effect that the Student's behavior had on the College community. The Dean of Students and the Director of Residential Life stated that they were not punishing the Student for cutting, or having suicidal thoughts. Rather, they wanted the Student to work with appropriate personnel, such as the counseling center, instead of alarming her friends and College faculty with frequent comments about cutting and suicide. They both repeatedly emphasized to OCR that the College's primary concern, beyond the Student's well-being, was the disruption to the campus community that the Student was creating by her comments to both peers and faculty about cutting and suicide.

On September [REDACTED] the Student's Hall President received a report from the Student's roommate, wherein the roommate said that the Student was crying and speaking of cutting herself. The reporting student wanted the behavior to stop, but did not think that the Student would hurt herself.

On September [REDACTED] the Dean of Students and the Director of Residential Life sent the Student a letter (behavior agreement) based on the September 14 meeting, in which they asked the Student to agree to the following conditions:

- "Live in the community in a manner that does not create a risk to your personal safety and the safety of those around you."
- "Refrain from engaging in behaviors that create reason to fear for your personal safety and the safety of those around you. This means using words and actions to seek attention from your friends in the community."
- "Use professional supports and college resources, such as the Counseling Service, instead of peers, when you begin to feel the need for support for health or mental health. This expectation is not meant to inhibit your relationship with your friends, but balance your options of support between friends and professional resources [on] campus. This means making and keeping appointments scheduled."
- "Stay in open communication with our campus Counseling Services, should you continue to seek off campus support. This means the release of relevant information as needed."

The letter further stated, “If you are unable to adhere to the terms of this agreement, we will need to look into other support options such as housing reassignment (on or off campus), and/or a leave of absence.” The behavior agreement does not specifically mention any violation of a regulation of College rules or policy or required withdrawal.

Although the College was not aware at the time of any incidents that occurred between September [REDACTED] and November [REDACTED] the College later learned from some of the Student’s peers that the Student had frequently spoken of cutting and suicidal thoughts during this time.

On November [REDACTED] a student reported to her Student Advisor that the Student had made comments about cutting herself and suicide, during an online conversation. The Student Advisor contacted the Dean On-Call, who, in turn, contacted both Public Safety and the Dean of Students. Public Safety conducted a “well-being check” on the Student and reported that she was safe in her room with her roommate. Later that night, the Student agreed to speak with the on-call counselor, who attempted to set up a triage appointment for the following day with the Student, but was unsuccessful. The next day, November [REDACTED], the reporting student printed out and supplied to her Student Advisor, the text of the on-line conversation in which the Student had talked about cutting herself and stated that she wanted to die.

On the afternoon of November [REDACTED], the Dean of Students met with the Dean of the College to discuss the Student’s situation. They decided that immediate required withdrawal was the appropriate sanction for the Student’s failure to adhere to the conditions of the behavior agreement. They also decided that, if the Student wanted to finish the semester, they would allow her to do so, but only under the following conditions: first, that one of the Student’s parents move to the area; second, that the Student live off-campus with the parent; and third, that the Student agree to take “voluntary” medical leave for the Spring [REDACTED] semester. The Deans decided that if the Student did not accept those conditions, they would require that the Student immediately withdraw. They also decided that the Dean of Students would contact the Student in regards to this decision while the Dean of the College would contact the Student’s parents. The Dean of Students contacted the Student the next day to set up a meeting to discuss the required withdrawal; however, they were not able to meet until November [REDACTED] due to the Student’s busy schedule.

On November [REDACTED], the Dean of Students met with the Student and informed her that she was in direct violation of the behavioral agreement because of the November [REDACTED]th on-line conversation in which she talked to another student about cutting and wanting to die. For that reason, she was required to withdraw from the College immediately, with the opportunity to apply for readmission in the Fall of [REDACTED]. The Dean of Students informed the Student that she had two days to appeal the decision. OCR also noted that during this meeting the Student provided the Dean of Students with a letter of support from her roommate. The letter, while generally supportive of the Student, reported an additional incident in which the Student caused the roommate to fear for the Student’s safety. Specifically, the letter stated that on November [REDACTED] [REDACTED] the Student again told her roommate that she wanted to kill herself.

As the Dean of Students was speaking with the Student, the Dean of the College was speaking with the Student’s parents to inform them of the immediate required withdrawal. In this

conversation, he also offered the option that the Student could finish the semester under the close supervision of one of her parents. The following day, November [REDACTED], the Dean of the College sent the parents an e-mail to clarify that the option of finishing the semester under the supervision of a parent was contingent upon the Student appealing the immediate required withdrawal, and electing to take voluntary medical leave for the Spring [REDACTED] semester, instead of the immediate required withdrawal.

That same day, November [REDACTED] the Dean of Students also sent the Student an e-mail referencing their conversation the previous day. The e-mail reiterated that the November 8th conversation with the Student's friend was a direct violation of the behavior agreement; consequently, the College was requiring the Student to withdraw from the College with the opportunity for readmission in the fall of [REDACTED]. The e-mail also detailed the option of avoiding required withdrawal, by having the Student finish the semester living off-campus with parental supervision, so long as the Student agreed to take voluntary medical leave for the Spring [REDACTED] semester.

The Student's parents requested clarification about the College's option that would allow the Student to avoid immediate required withdrawal. The Dean of the College responded that the College's reasons for allowing the Student to complete the semester with parental supervision, and offering the voluntary medical withdrawal, were to get the Student the additional support that she needed to control the "spillout of her behavior to the community," and because the College could not assume the risk and responsibility for self-injury. On November [REDACTED], the Student's mother temporarily moved from out of state to [REDACTED], Massachusetts, to comply with the requirement that the Student have parental supervision to complete the semester.

On November [REDACTED], the Dean of Students met with two of the Student's College friends, who stated that they were concerned about the Student's health and safety. After the meeting, the students provided print-outs of instant message conversations between themselves and the Student. Those conversations, which occurred between September [REDACTED] and November [REDACTED], [REDACTED] contained multiple references to cutting and suicidal thoughts.

After several changes in the deadline for the date of the appeal, the College ultimately extended the final deadline for the appeal to November [REDACTED]. Faced with the option of an immediate required withdrawal, or the opportunity to finish the semester under the supervision of one of her parents and voluntary medical leave for the following semester, the Student appealed the decision of required withdrawal and requested medical leave for the Spring of [REDACTED] semester on November [REDACTED] specifically noting the reservation of any legal rights. The College granted her appeal of the immediate required withdrawal, permitting her to finish the Fall of [REDACTED] semester while living off-campus under the supervision of a parent.

On January [REDACTED], the Student filed a second appeal, specifically about the College's requirement that she take voluntary medical leave or face immediate required withdrawal. The Dean of the College denied the appeal on January [REDACTED]. The denial stated the College's concern for the Student's health and for the need for the Student to conduct herself in a way that supports and advances the residential community. Additionally, the Dean stated that the required withdrawal, and the College's subsequent decision to allow the Student to trade that for finishing

the semester with parental supervision, then taking voluntary medical leave, was based on the recommendation of a psychologist at the College, that the Student needed intensive, residentially based treatment. OCR found that this assertion was not supported by OCR's review of information, or its interviews, however, which showed that the Dean of the College and the Dean of Students made their "original decision" to require immediate withdrawal on November [REDACTED] before they consulted with that psychologist.

The Student further appealed the denial to the President of the College. The College did not respond to this appeal.

B. College Policies

Non-academic violations of College regulations

The College's policy for non-academic violations, entitled "Procedures for Allegations of Major Violations of Social Conduct" (Procedures), provides that "the power to suspend or exclude a student for the violation of non-academic regulations shall be vested in the Council on Student Affairs (CSA)," subject only to a student's right to appeal to the President. These procedures designate the CSA with the duty, power and responsibility to adjudicate cases involving non-academic violations. The CSA is both the presiding board, for cases involving non-academic violations, and the board of appeal for cases where sanctions and procedures in nonacademic violations are disputed. The Procedures further provide that the CSA is presumed to have jurisdiction over matters of student non-academic life if those matters are not specifically delegated to other bodies.

If the CSA accepts a case, an investigator is assigned to interview the persons involved and to make an informed report to a Hearing Board that is comprised of students and at least one faculty member, who is appointed by the Dean of Students and/or Dean of the College. The Hearing Board can dismiss a case; sanction a student without a hearing; refer the case to another appropriate office on campus (e.g. Residential Life); or, hold a hearing. If it decides to hold a hearing, both complainants and respondents have an opportunity to be heard, to have an advisor present and to question each witness. After the hearing, the Hearing Board makes written findings as to whether or not a violation occurred. The Hearing Board also has the power to impose sanctions.

There are no other written policies or procedures which provide that non-academic violations can be heard by any person or entity other than the CSA, according to the interviews and documents provided to OCR.

Behavior Agreements

The College does not have any written policy regarding the use of behavior agreements. Faculty informed OCR that the agreements had developed over the past five years as an alternative to the College disciplinary process. The College told OCR that it uses behavior agreements in situations where a student's behavior poses a disruption to the community. A typical agreement is a letter that identifies the student's offending behavior, then sets behavioral expectations for

the student to meet, in order to be successful within the college community. Although the College calls them "behavior agreements", students are not asked to sign, or even respond to, the letters, but rather must conform their behavior to a set of conditions imposed by the College. There is no set consequence for violating a behavior agreement.

Appeal

According to College policies, a complainant or respondent may appeal the findings in her case to the Dean of the College. If the Dean of the College approved the sanction of the CSA, then the complainant may appeal to the President of the College. The Dean of the College or the President may uphold the previous decision, reverse or alter the previous decision, reduce the sanctions, or return the case to the CSA for further consideration or hearing.

There are no written policies regarding the appeal of the disciplinary decisions made outside of the CSA process, including decisions of required withdrawal by the Dean of Students. According to the Dean of the College, however, in regards to disciplinary decisions made by the Dean of Students, it was the College's practice for the appeals to be heard by the Dean of the College. According to the documentation provided by the College, the practice was for appeals to be heard either by the Dean of the College or the President of the College.

LEGAL STANDARD

The Section 504 regulation at 34 C.F.R. Section 104.43 (a) and (c) 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 otherwise be subjected to discrimination under any program or activity of an entity subject to the requirements of Section 504 (hereinafter a "covered entity"). To establish a violation of 34 C.F.R. Section 104.43 (a) and (c), OCR must prove that the covered entity's actions were taken against an individual "on the basis of" that individual's disability, rather than other legitimate considerations. One way to prove that the reason for a covered entity's actions was discrimination is to use a "different treatment" analysis. Under this analysis, OCR must establish that 1) the individual is a member of a protected class, and 2) the individual was treated less favorably than similarly situated persons outside the protected class of disabled persons. If steps 1 and 2 above are established, OCR must examine 3) whether the covered entity was able to offer a legitimate, non-discriminatory explanation for the less favorable treatment. If steps 1 and 2 are not established, it generally is not necessary to go to step 3; failure to prove steps 1 and 2 means that the evidence is insufficient to prove the covered entity's action was taken because of disability. If steps 1 and 2 are established and the covered entity does not offer a legitimate, non-discriminatory justification for its action under step 3, OCR generally will find the evidence sufficient to prove that the covered entity's action was taken "on the basis of" disability. In analyzing the justifications offered by a covered entity, OCR will attempt to test the justification to ensure that it is not an after-the-fact explanation, or pretext, for discrimination. OCR also may rely on other evidence to determine whether a covered entity's action was taken "on the basis of", or because of a person's disability. OCR may interview the individuals responsible for an action about the reasons for the action and may consider other

contemporaneous events to support or refute their explanation. OCR may also consider whether an action is consistent with the covered entity's general policies, procedures and practices. Absent specific evidence to the contrary, an action's consistency with general policies, procedures and practices tends to suggest that the action was taken in the normal course for legitimate purposes. Departures from existing policies and practices, by contrast, tend to suggest that something irregular has happened and, if not adequately explained, may support other evidence of discrimination. Procedural irregularities also may contribute to an environment that allows discrimination to occur.

Section 504 does not prohibit recipients at the post-secondary level from establishing standards for their programs, even if those standards may be difficult or impossible to meet for some persons with disabilities. If a student with a disability believes he or she needs an accommodation or adjustment to meet a post-secondary entity's standards, it is the obligation of the student to identify themselves as a student with a disability and request accommodation or adjustment. If a student with a disability does not self-identify and request an accommodation or adjustment, the covered entity is entitled to hold the student to the same standards and to treat the student in the same manner as it would any non-disabled students in its program. In no event, however, is the covered entity required to alter the fundamental nature of its program or adjust essential program requirements.

DISCUSSION AND ANALYSIS

As stated in the Legal Standards section of this letter above, OCR must determine that the College's actions were taken "on the basis of," or because of, an individual's disability, in order to prove that the actions were discriminatory under 34 C.F.R. Section 104.43 (a). To this end OCR applied a "different treatment" analysis to the evidence gathered during investigation. Under this analysis, OCR considered: 1) whether the Student was a member of the protected class; 2) whether other similarly situated persons outside the Student's protected class (i.e. non-disabled persons) were treated more favorably than the Student; and if so, 3) whether the College offered legitimate, non-discriminatory and non-pretextual reasons for its actions.

OCR first determined that at the time of the events that led to this complaint, the Student was a member of a protected class as a qualified person with a disability. The College does not dispute that the Student is a qualified person with a disability.

OCR also determined that the College excluded the Student from its educational program and activities. Although the College contends that the Student's withdrawal was voluntary, the evidence clearly showed that the Student's withdrawal was not voluntary. The College would only allow her to complete the Fall █████ semester if she "voluntarily" accepted medical leave for the Spring █████ semester. If she did not agree to those conditions, then the College would not let her finish the Fall █████ semester, and she would be required to immediately withdraw. The Student agreed to those conditions reluctantly, and repeatedly and unambiguously made her desire to remain at the College known to the Dean of the College and the Dean of Students both verbally and in writing. For these reasons, OCR concluded that the College did exclude the Student from its educational program.

OCR then considered whether the College excluded the Student on the basis of, or because of, her disability. The College denied that its actions were taken because of the Student's disability, stating that it initially required the Student to withdraw, then subsequently provided her the option of voluntary withdrawal, solely because of the disruption that she created in the residential community by her comments about cutting herself and suicide. The College further asserted that it responded to the Student's behaviors in a manner that was generally consistent with how it handles major, non-academic violations, although the College stated that the Student's situation was somewhat unique.

OCR conducted a different treatment analysis to assess whether the Student was excluded because of her disability, by first examining whether similarly situated persons outside the Student's protected class were treated more favorably than the Student. In other words, OCR considered whether there was sufficient evidence to show that the College treated similarly situated, non-disabled students – that is, non-disabled students who engaged in behaviors similar in number, frequency and kind to those of the Student – more favorably than it treated the Student. OCR was not able to find students who could be compared to the Student, however, because OCR did not find evidence of any other students at the College who engaged in the number, frequency, and kind of behaviors as the Student.

The College's witnesses stated that they were unaware of any other student at the College who had engaged in conduct that caused faculty, staff and peers to fear for that student's safety on so many occasions, over such a short period of time. The Student and the Complainant told OCR that another student was offered a single room after a suicidal gesture, as evidence that the Student was treated less favorably than similarly situated students. OCR did not find that this student was similarly situated to the Student, however, because the two students' behaviors differed in kind, number and frequency. Absent any non-disabled students to compare to the Student, OCR was unable to answer affirmatively the second question of a "different treatment" analysis, that is, whether the Student was treated less favorably than similarly situated, non-disabled students.

OCR also examined the process followed and sanctions imposed on other students who engaged in major, non-academic behaviors that disrupted campus life, to determine whether the Student was treated consistently with other students. These students included both disabled and non-disabled students. At OCR's request, the College provided documentation to corroborate its assertion that the College consistently referred major, non-academic violations to the Dean of Students for resolution. As a result of that examination, OCR found that the process followed and disciplinary sanction imposed on the Student were consistent with other cases involving disruptions to residential life.

OCR found that since September [REDACTED] the College has instituted five behavior agreements: two regarding violations of the guest policy and three which involved individuals engaging in behaviors which created reasons for others to fear for those students' safety. In each instance, the Dean of Students met with the student either individually, or with the Director of Residential Life, to identify the offending behavior, and to set clear behavioral expectations going forward. After this meeting, the Dean of Students sent a letter, or behavior agreement, to each student outlining the offending behavior and the College's conditions. Additionally, in each case, the

student's parents were notified of the meeting, the behavior at issue, and of the agreement. OCR found that this process was also followed with the Student.

OCR also considered how the College handled other students who engaged in cutting or suicidal behaviors, as possible indications of disability, to determine if there was possible discriminatory treatment (e.g. the treatment was based on stereotypes). The College provided OCR with data regarding other students at the College who had engaged in cutting or suicidal behaviors. During the [REDACTED] and [REDACTED] academic years, there were thirteen students who engaged in cutting and/or suicidal behaviors. Of those thirteen students, three of them took medical leave immediately following the incident, while two other students took medical leave at some time after the incident. The data further revealed that, although several of the remaining eight students were punished for conduct that occurred in concert with the suicidal gestures (e.g. intoxication, assault and vandalism), no student was sanctioned for cutting or suicidal behavior itself. Moreover, each of these eight students stayed at the College without interruption in their academic coursework. The College's treatment of other students supports the College's assertion that the sanctions imposed on the Student were based on an individual assessment of the seriousness of her individual case, rather than on general stereotypes of students who exhibited cutting or suicidal behaviors. Additionally, OCR noted that the College tried to use more lenient methods to modify the Student's disruptive behavior, including the offer of counseling services and the behavior agreement; it was only when the Student's disruption to the community persisted, that the College imposed the more severe sanction. Therefore, OCR found that the College did not discipline students for cutting or suicidal gestures, but rather only sanctioned students for behavior that either did not conform to school policy, or that disrupted the College community.

In analyzing whether the College's actions were taken "on the basis of" the Student's disability, OCR also considered whether the College's actions towards the Student were consistent with its general policies, practices or procedures. Although OCR found that the College's written procedures were facially non-discriminatory, the College told OCR that it did not follow these procedures in the case of the Student, nor in any situation of non-academic withdrawals over the past few years. According to each of the College administrators interviewed by OCR, it has been the College's practice for the past several years to refer all of the major, non-academic discipline issues, such as the Student's case, to the Dean of Students for resolution. OCR found that, in fact, for the [REDACTED] and [REDACTED] academic years, the Dean of Students' office handled all five non-academic discipline cases in which the College implemented a behavioral agreement, and all eight of the cases in which required withdrawal was the sanction. These thirteen cases included both disabled and non-disabled students. OCR therefore found that although the College's actions toward the Student were not consistent with its own written procedures, the College's actions were consistent with its own practice, which it had used in all other cases of major, non-academic violations. Thus, OCR found that the College's treatment of the Student was consistent with the disciplinary process that it used for all students, disabled and non-disabled.

OCR also considered whether the College's actions in regards to the appeal process for non-academic violations was consistent with its general policies. Under the College's written policy, the President of the College hears the appeal of a decision of required withdrawal that was

approved by the Dean of the College, as the required withdrawal was in this case. The College policies also only provide for one opportunity to appeal the decision. The College conceded that it did not follow this appeals process. Here, the Dean of the College approved the original required withdrawal decision and also heard the appeal. The Dean of the College allowed the appeal, and the College permitted the Student to finish the semester and take voluntary medical leave. According to witnesses and documentation provided by the College, it has been the practice of the Dean of the College to hear student appeals of decisions, regardless of whether or not he approved the original decision and without regard to the students' disability status. Accordingly, OCR found that, while the College did not follow its written procedures for the Student's case, its actions were consistent with the practices it applied to both disabled and non-disabled students.

OCR next analyzed whether there was sufficient evidence that the reasons proffered by the College for instituting the behavior agreement and, ultimately sanctioning the Student with required withdrawal, were a pretext for discrimination. OCR looks at a variety of information in analyzing the legitimacy of the reasons proffered by a recipient. The focus of OCR's investigation is not to determine whether the Student violated the College regulations or whether the College should have punished the Student. Instead, OCR examines the reasons for imposing the disciplinary sanctions to determine whether the College's actions appear to be legitimate under the circumstances or whether the College's actions were, in fact, motivated by her disability.

In this case, the College asserted that it had legitimate, non-discriminatory reasons for requiring the Student to withdraw. The College asserted that it did not discipline the Student because of her disability or because of the cutting and suicidal gestures, but rather because her conversations disrupted the community by creating reasons for faculty and other students to fear for her safety. The evidence gathered during this investigation supports the College's claim that its actions were based on the Student's disruption of the community and not on her disability. Through interviews with College staff, OCR learned that the College implements behavior agreements when students act in a way that disrupts the College community. Here, the evidence showed that the numerous reports of cutting and thoughts of suicide by the Student created alarm amongst her friends and dorm mates, and also alarmed the faculty to whom the Student reported such thoughts. Students reporting to the Hall President and to administrators stated that they were scared, concerned and upset by the Student's reports of cutting and thoughts of suicide. Based on records provided by the College and the Student, OCR found that between September [REDACTED] and September [REDACTED], the College became aware that the Student raised issues of cutting herself four different times, and that she involved many different people, including the Hall President, a Student Advisor, two Deans-On-Call, Public Safety, her roommate, and a faculty member. On September [REDACTED], the Dean of Students and the Director of Residential Life met with the Student to identify the disruptive behavior and discuss supports for the Student to be successful. Despite this meeting and the discussion that sharing cutting and suicidal thoughts with peers was disruptive and was more appropriate for counseling staff, on September [REDACTED] the Student's Hall President again received reports from the Student's peers that the Student was speaking of cutting herself. The Dean of Students then sent the Student a letter on September [REDACTED] outlining a behavior agreement which included, in part, the following requirement: "[The Student will agree to] [r]efrain from engaging in behaviors that create reason to fear for your

personal safety and the safety of those around you. This means using words and actions to seek attention from your friends in the community.” Nonetheless, on November [REDACTED], the Student again made statements about cutting and suicide to a fellow student, in a verbal conversation and in online correspondence. The evidence showed that the College heard a large number of concerns about the Student from her peers, who reported their concern for, and stress about, the Student’s actions. In light of the number and seriousness of the complaints received, OCR could not conclude that the College’s actions were pretextual. Consequently, OCR found that requiring the Student to withdraw was based on legitimate, non-discriminatory reasons unrelated to disability, namely a breach of the behavior agreement by behaviors that were disrupting the community.

OCR also found that the Student did not request any accommodations or adjustments in relation to the cutting and suicidal behaviors. As noted above in the Legal Standards, at the post-secondary level, Section 504 requires a student with a disability to self-identify as a disabled individual; provide supporting documentation; and, request accommodations or adjustments. In this case, the Student never requested an accommodation or adjustment relative to her cutting and suicidal behaviors prior to the discipline process. Additionally, Section 504 does not support the argument that the behaviors for which she was disciplined were not lawful reasons for required withdrawal because they were manifestations of her disability. At the post-secondary level, covered entities are permitted to establish general academic and behavioral standards that students, including students with disabilities, are expected to meet. If a student with a disability seeks some accommodation of those standards, that student must first self-identify, document the nature and severity of her disability, and then suggest reasonable and appropriate accommodations. In this case, the Student never engaged in this process with the College prior to the initiation of the discipline process.

The Complainant also raised a particular concern regarding the Dean of the College’s January [REDACTED] denial of the Student’s second appeal. In the January [REDACTED] letter, the Dean stated that the original decision to require the Student’s withdrawal was based, among other things, on the psychologist’s recommendation that she needed residential treatment. OCR found that neither the Dean of Students, nor the Dean of the College consulted with the psychologist until after they made the decision to require withdrawal. This finding does not alter OCR’s conclusion, however, because we found, regardless of the reasons proffered in the Dean’s denial of the appeal, that the College did not treat the Student differently, in terms of process or sanction, than non-disabled students.

CONCLUSION

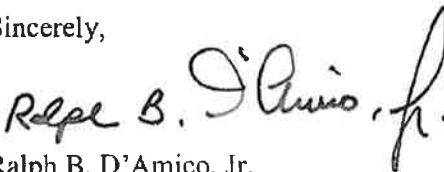
Based on the evidence, OCR concluded that the College’s actions were taken not “on the basis of” the Student’s disability, but rather because of the Student’s conduct over the course of the semester. The Dean of Students and Director of Residential Life met with the Student in-person on September [REDACTED] and, subsequently, drafted a behavior agreement, in order to outline the specific behaviors with which the College was concerned. The College consistently referred the Student to counseling and offered services to her. On November [REDACTED] when the College decided to require immediate withdrawal of the Student, it made a determination that the Student was not able to conform her behavior to its requirements, which were clearly outlined in the

behavior agreement. It further determined that the failure to follow the behavior agreement interfered with members of the College community, and that because of that interference, disciplinary steps needed to be taken. The evidence indicated that the Student had a disability, that the College excluded her from its educational program, and that her inappropriate behaviors may have been influenced by her disability. As explained above, however, this does not mean that the College's actions were discriminatory in violation of Section 504 because students with disabilities are generally required to meet the same academic and behavioral standards as non-disabled students. Here, the weight of the evidence indicates that it was the Student's behavior, not her disability that led to the College's actions to require her withdrawal and subsequently allow the alternative of "voluntary" medical leave. For this reason, OCR concluded that there was insufficient evidence to conclude that the College discriminated against the Student on the basis of disability. OCR therefore finds that the College did not violate Section 504.

The determinations contained in this letter are not intended and should not be construed to cover any other issues regarding compliance with the regulation implementing Section 504 that may exist but are not discussed herein.

We thank you and the College staff for the cooperation extended to us during this investigation. If you have any questions about the disposition of this matter, please contact Ms. Meighan McCrea at (617) 289-0052 or by electronic mail at Meighan.McCrea@ed.gov or Michael Joyce at (617) 289-0059 or by electronic mail at Michael.Joyce@ed.gov. You may also contact me directly at (617) 289-0044.

Sincerely,



Ralph B. D'Amico, Jr.
Compliance Team Leader