

**U.S. DEPARTMENT OF EDUCATION****P.O. BOX 14620****WASHINGTON, DC 20044-4620****e-mail: OCR_DC@ed.gov****OFFICE FOR CIVIL RIGHTS
SOUTHERN DIVISION****DISTRICT OF COLUMBIA OFFICE
District of Columbia, Virginia, North Carolina**

March 6, 2003

By Facsimile and U.S. Postal Service, Return Receipt Requested

Kent Chabotar, President
Guilford College
5800 West Friendly Avenue
Greensboro, North Carolina 27410

RE: OCR Complaint #11-02-2003

Dear Dr. Chabotar:

This letter is to advise you of the determination reached on the above-referenced complaint that was filed on November 20, 2001, with the District of Columbia Office of the Office for Civil Rights (OCR), U.S. Department of Education (Department) against Guilford College (the College). The complaint was filed by (b)(6), (b)(7)(C) (the Complainant), who alleged that the College discriminated against her on the basis of her disability (emotional disability). Specifically, the Complainant alleged that because of manifestations of her disability, she was involuntarily withdrawn from the College. The Complainant further alleged that the College failed to provide her with due process when it involuntarily withdrew her. The Complainant also alleged that the counseling services provided to her by the College for her disability were inadequate.

OCR conducted a complaint investigation under the authority 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, which prohibit recipients of Federal financial assistance from the Department from discriminating on the basis of disability. The College is a recipient of financial assistance from the Department, and, therefore, must comply with the laws enforced by OCR.

The regulation implementing Section 504 states the following:

- § 104.3(j)(1): An individual with a disability is any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

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- § 104.3(j)(2)(i)(B): A physical or mental impairment includes any mental or psychological disorder, such as mental illness.
- § 104.3(k)(3): A qualified individual with a disability, with respect to postsecondary education and vocational education services, is one who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity.
- § 104.4(a): 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 which receives or benefits from Federal financial assistance.
- § 104.7: Recipients with 15 or more employees must designate at least one person to coordinate compliance with Section 504 and must adopt grievance procedures that incorporate appropriate due process standards and provide prompt and equitable resolution of disability-based complaints.
- § 104.43: 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 under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity.

In reaching our determinations, OCR reviewed the complaint and additional documents and testimony provided by the College, the Complainant, and other sources. Our determinations follow.

Involuntary Withdrawal

The Complainant alleged that the College discriminated against her on the basis of disability when it involuntarily withdrew her because of the self-injury manifestations of her emotional disability and failed to provide her with due process.

Background

The Complainant claims that she has an emotional disability (post-traumatic stress/dissociative disorder) and that, as a result, she engaged in self-injurious behavior. She stated that, in order to prevent exacerbation of her disability, she had been advised to avoid stress in her life, and, because she believed that her parents were a major source of stress to her, she had broken all ties with her parents and had had her grandmother appointed as her legal guardian while she was in her last year of high school.

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The Complainant entered the College as a freshman student at the end of August 2001. On the College health form completed by the Complainant's physician on August 15, 2001, the physician indicated that the Complainant was under treatment for depression/anxiety. The Complainant also indicated on the form that her academic career had been interrupted due to physical or emotional problems and that she had been an in- and out-patient for treatment of depression and sleep problems in March and April 2001.

After the Complainant arrived on campus in August, she discovered that the College had acquired her parents' mailing address from her financial aid information and invited them to visit the College during Parents' Weekend on September 21, 2001. When the Complainant informed the College that she did not want her parents there because she had been removed from her parents' custody, the College apologized for the mistake and promised to immediately correct all administrative records. An electronic mail message dated August 29, 2001, to the Complainant from the Assistant Director of Enrollment informed the Complainant that her parents' address had been removed from the mail flow by the computer staff. However, the Complainant stated that administrators at the College told her that they could not correct the Parents' Weekend invitation and that her parents would be visiting for the weekend of September 21. The Complainant asserted that the College's invitation to her parents to visit during Parents' Weekend caused her undue mental strain and exacerbated her disability, which led to her having two depersonalization episodes involving self-injury over the subsequent few weeks.

The Complainant had first learned about the College's Counseling Center from the College's Student Health Center before she arrived on campus. Once at the College, the Complainant sought out the Counseling Center's services. The Complainant filled out a form entitled *Guilford College Center for Personal Growth Confidential Information Form* when she went for her first counseling session on August 30, 2001. In the section on the form where the client is asked to "explain the main concern that brings you to the counseling center," the Complainant indicated post-traumatic stress with depersonalization and night trauma, nightmares, and occasional insomnia. The Complainant also indicated on the form that she was extremely concerned about family problems and problems with sleep and was very bothered by past events.

During her first counseling session with the College's Director of Counseling Services (Director), who is a therapist/licensed clinical social worker, the Complainant informed the Director that she had post-traumatic stress disorder with certain side effects such as anorexia, bulimia, insomnia, nightmares, night traumas, repression, self-injury, social anxiety, and suppression and that she was taking medications for depression and problems with sleeping. The Director suggested a therapeutic technique called Eye Movement Desensitization and Reprocessing (EMDR) to treat her post-traumatic stress disorder and lent her a book about the technique. The Director told OCR in his telephone interview that he did not consider the Complainant's post-traumatic stress disorder to be a disability at the time of their first session because of the way in which she presented herself and because she did not ask for any reasonable modifications.

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On August 31, 2001, the Complainant went to the College's Student Health Center for prescription refills for anxiety and depression medications. The physician's notes indicated that the Complainant reported she had a past history of anxiety, depression, and eating disorders, but no suicidal ideations. The physician refilled the Complainant's prescriptions and instructed her to return within one month.

The Complainant had her second counseling session with the Director on September 6, 2001. The Director's notes of the session reflect that the Complainant "is a cutter and has borderline tendencies" and "has projections to parents," and that she depersonalizes but likes the College. The Complainant stated to OCR that she told the Director that her parents' upcoming visit for Parents' Weekend was causing her stress.

During the weekend of September 8, 2001, while in her dormitory at the College, the Complainant had a depersonalization episode and cut herself. Another student took the Complainant to the emergency room of a nearby hospital, where medical staff taped up her cuts. Upon her release, the emergency room's attending physician notified the College's Director of Counseling Services that the Complainant had been seen in the emergency room. The Director was notified because he is listed as one of the College's contact persons. Because he was not on-call, he contacted the Dean of Student Life, Mona Olds, to ask what he should do. After talking with Dean Olds, the Director went to the hospital to pick up the Complainant and another student who was with her. According to the Director, the Complainant "appeared to be doing well" and agreed to see him on September 10, but her appointment was later changed to September 13. On September 13, the Complainant returned the EMDR book to the Director but told him that she did not want to meet with him anymore because she was looking for another therapist.

OCR learned that, after the Complainant's first hospital visit following the September 8 cutting incident, the Director informed Dean Olds that the Complainant should be watched and that, if another incident did occur, the College should consider placing the Complainant on a medical withdrawal. The Director's notes and interview also revealed that he met with Dean Olds and the Director of Residential Life on September 14 to tell them about the Complainant's cutting situation, although he told them that she was not suicidal.

The Director's notes indicate that on September 15, 2001, he received a call from Campus Security reporting that the Complainant had cut herself again, but he directed Security to Dean Olds because the Complainant was not comfortable with him. Apparently this cutting was not severe enough to require medical treatment, and others in the Complainant's dormitory and Security checked up on her over the next few hours as she slept.

On the morning of September 17, 2001, the Director again talked with Dean Olds and concluded that the Complainant needed a medical leave for the semester because the Complainant had cut herself again and the Director had met with another student who was upset about the Complainant's cutting. That same day, Dean Olds called the

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Complainant's grandmother, who had been her legal guardian before she turned 18, to inform her that the Complainant would be placed on medical withdrawal from the College and would need assistance in getting home. The grandmother told OCR that Dean Olds was agitated when she called and demanded that she "just come and get [the Complainant] out of here." Because the grandmother was very sick at the time, she could not go to campus to assist the Complainant, so she provided Dean Olds with the parents' telephone number. Dean Olds called the Complainant's parents shortly thereafter and asked them to come remove the Complainant from campus.

On the night of September 17, 2001, the Complainant had another depersonalization episode and again cut herself while in her dormitory. Another student took the Complainant to the local hospital, where doctors stitched up her cuts and then involuntarily committed her for evaluation because of her multiple "parasuicidal" cuttings. On September 18, the Complainant was transferred to a psychiatric hospital, where she was put on intermediate-level suicide precautions, but within a few hours staff determined that she was not suicidal and took her off suicide precautions. On September 19, the Complainant met with the resident psychiatrist and a social worker and developed a treatment plan, which included continuing her anxiety medication, attending support group meetings, making follow-up appointments at the community mental health center, and setting up an emergency contact for when she felt an urge to cut herself. The Complainant was released from the psychiatric hospital that day on a 60-day outpatient commitment, and she returned to the College with a letter excusing her absences.

When the Complainant arrived back on campus on September 19, 2001, she had time to send an electronic mail message to faculty members saying that she would be back in class the next day and would make up any missed class work. However, the Residential Life Coordinator found her later that day on campus and informed her that the College was placing her on medical leave, she had to leave campus immediately, and her parents had been contacted and had come to pick her up.

Although the College says that it was involuntarily withdrawing the Complainant for medical reasons, it completed a *Petition for Withdrawal or Leave of Absence* form (Petition), which the College uses when a student voluntarily withdraws or requests a leave of absence, for the Complainant. The form is intended to be filled out by the student, but the signature line of the Petition filled out for the Complainant shows that it had been signed "per [Dean] Olds" on September 19, 2001, to be effective that same day, and there is no evidence or testimony that the Complainant ever saw the Petition before her parents took her from campus. Further down the Petition, under "Special Conditions before Readmitting," it specifies that the Complainant would need "supporting documentation from therapist and approval of Director of Counseling."

On September 24, 2001, after leaving the College as instructed, the Complainant sent a note by electronic mail to Dean Olds indicating that she wanted to appeal the decision to dismiss her from the College. The Complainant attached a notice of appeal statement and an outline of her reasons for the appeal. She requested a statement of the reasons for the removal decision, a hearing with an opportunity to present evidence, a review of the

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decision by the appeal board, and immediate reinstatement to the residence hall and classes pending the appeal. As one of her reasons, the Complainant raised her emotional disability and a lack of reasonable modifications. In response, Dean Olds replied to the Complainant by electronic mail on September 25 to clarify that she had been withdrawn from the College for medical reasons, not dismissed, and that she was eligible to reapply as early as the next semester as long as she had supporting documentation. Dean Olds explained that her decision to withdraw the Complainant for medical reasons was based on the strong recommendation of the College's Director of Counseling Services. In a postal letter to the Complainant dated October 1, 2001, Dean Olds repeated her explanation and then provided further details on the reasons for the withdrawal, including two cutting incidents within a short period of time that resulted in hospital visits and other students who were concerned about the Complainant and who feared that the cutting behavior might become worse. The letter also informed the Complainant that she could request a review of the decision by submitting her concerns in writing to the Associate Academic Dean, James Hood.

On October 4, 2001, the Director of Counseling Services received a telephone call from the Complainant's former psychologist. The Director explained to the psychologist the reason the Complainant was placed on medical leave, and the psychologist indicated that he would share the information with the Complainant.

On October 12, 2001, the Complainant sent a letter to Dean Hood via electronic mail requesting his review of the College's decision to withdraw her from enrollment, a reversal of the decision, and reinstatement. She also attached her outline of reasons for the appeal. In addition, she sent a memorandum to Dean Hood on October 22 that detailed the events leading up to her withdrawal. Dean Hood responded to the Complainant in a one-page letter dated November 7, 2001, in which he informed the Complainant that he had talked with the College personnel she mentioned in her materials and had reviewed written documentation regarding her admission and medical withdrawal. It was Dean Hood's judgment that Dean Olds acted appropriately in making the decision to withdraw the Complainant on medical grounds for the reasons explained in her October 1 letter. Dean Hood stated that Dean Olds' decision was made on the basis of a clinical determination that was clearly warranted. Because the Complainant remained eligible to reapply for admission as early as the next semester, Dean Hood would not comment specifically on the summary she included with her request for review, although he pointed out some factual discrepancies in her account. The letter concluded with a reminder that if the Complainant wished to apply for readmission to the College, she would need to provide supporting documentation from a therapist and have approval from the College's Director of Counseling Services. The Complainant then filed her discrimination complaint with OCR two weeks later.

Analysis

In analyzing a disability discrimination complaint under Section 504, OCR first determines if the student is a qualified individual with a disability. Based on OCR's review of the evidence provided, OCR has determined that, within the meaning of

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Section 504, the Complainant is an individual with a disability relevant to the issues raised by the complaint. Evidence obtained by OCR shows that, among other things, the Complainant had severe night trauma and night terrors and that her post-traumatic stress resulted in nightmares and lack of sleep sufficiently serious to substantially limit her in the major life activity of sleeping.

OCR then examined whether the Complainant put the College on notice of her disability or the need for any reasonable modifications. At the postsecondary level, the burden falls on the individual with a disability to self-identify to a university and to request reasonable modifications, if appropriate. However, an educational institution cannot require "magic words," only a reasonable indication of a student's intention to identify the disability, and must let students know where to go for disability services.

The College's *Student Handbook* contains a general nondiscrimination policy under "Student Rights": "In its active commitment to building a diverse community, [the] College rejects discrimination on the basis of ... handicap ... in admission, employment or access to programs. The college also seeks to avoid discrimination in the administration of educational programs, admission policies, financial aid or any other college program or activity." The *Student Handbook's* Resource Guide section, in its description of "Dean of Student Life," states that students with physical disabilities should contact that office for referral to and coordination of needed services, but there is no reference to students with emotional or mental disabilities.¹

The College provided OCR a copy of its *Policy Statement on Student Applicants and Students with Disabilities: Provision of Reasonable Accommodation for Education Programs, Activities and Other Services* (Sept. 1995) (Policy). However, this Policy does not appear in the College's *Student Handbook*, and the College admitted to OCR that the Policy has been publicized only to faculty. The Policy states that in determining the College's ability to offer reasonable accommodation to an otherwise qualified applicant or student with a disability, each request for an accommodation will be evaluated on a case-by-case basis. A request for reasonable accommodation is submitted in writing to the Dean of Admission (in the case of an applicant) or to the Dean of Student Life (in the case of a student). The Policy also specifies what information the applicant or student needs to provide the College and a timeframe for the College's determinations.

The College also provided OCR a copy of a form entitled *First Year Program—Guilford College Student Needs Questionnaire*, which is part of the College's Family Guide Book. The questionnaire appears to be directed at parents instead of students, as it asks "does your daughter/son have ..." types of questions and requests "information that you think would be helpful as we prepare for your son's/daughter's arrival." The questionnaire asks, among other things, if the student has any learning differences or physical disabilities, or any other medical and/or psychological conditions (such as eating

¹ We note that the College's new *Student Handbook* for the 2002-2003 school year (available on the College's website) has been revised to include contact and referral information for students with psychological disabilities.

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problems, emotional problems, treatment programs) that need monitoring; it further asks if the student needs special accommodations (if so, further information and appropriate professional documentation to support the accommodation request are required). OCR was told that the questionnaire is part of the admission package that is mailed to each student's residence. The Complainant informed OCR that the Family Guide Book and questionnaire were probably mailed to her grandmother's address, but she did not remember seeing the package because she likely was in the hospital when it was mailed. In any event, there is no completed questionnaire for the Complainant.

However, according to the Complainant, when she visited the College in December 2000, she informed several people in the admissions office and during the admission process that her biological parents were not her legal guardians and were not to be contacted. The Complainant further alleged that she told the College that she had an emotional disability. The Complainant informed OCR that she sought only counseling, which is available to all students, and never requested that the College provide her with any modifications for her disability because she did not need any when she first arrived on campus. She stated that the College never requested documentation of her disability.

During telephone interviews with College personnel, several employees informed OCR that although the Complainant had mentioned her parental situation, she did not submit documentation to show that she had been legally emancipated. The employees stated that they took the Complainant's word and removed the parents' address from administrative files. Data from the College indicated that its computer database included a notation from an admissions counselor that the Complainant needed "special advising" due to her "tough life" and that, because she was emancipated from her parents, she would need "social support." However, because the Complainant was admitted late in the admission process, this information was not entered into the database until June 21, 2001, and, as a result, not everyone saw it. Further, her name did not appear on the list of students who would need special attention that is provided to each dormitory residential assistant at the beginning of the school year.

During the first counseling session with the Director of Counseling Services, the Complainant revealed that she had post-traumatic stress disorder and that self-injurious behavior was one of the side effects. The Director told OCR that in the course of counseling students he sometimes asks for disability documentation if he has questions about the information he receives on the intake form and during sessions. He never asked the Complainant for documentation because he only saw her twice therapeutically and she was guarded with him from the start, so he proceeded carefully. In addition, during a visit to the Student Health Center for prescription refills when she first arrived on campus, the Complainant told one of the physicians that she suffered with anxiety, depression, and an eating disorder. In both cases, it is not clear that the Complainant's statements themselves were sufficient to put the College on notice that she had a disability as defined by Section 504; furthermore, these statements were made in confidential settings and cannot be considered notification to the College of a disability or a need for reasonable modification.

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Based on the above information, the evidence is insufficient to show that, prior to her cutting incidents, the Complainant identified herself to the College as a student with a disability, except perhaps in confidential situations, or provided the College with documentation of a disability. However, it is not obvious to OCR that the College makes it clear to applicants and students where to go to give notice of an emotional or mental (as opposed to a physical) disability and the need for reasonable modifications. While the parental questionnaire provides some information, the *Student Handbook* and Policy statement are not clear or widely disseminated. Furthermore, at the time that the College made the decision to involuntarily withdraw the Complainant, the College either knew or should have known that she had a disability, based on the Director's conversations with Dean Olds.

In this case, the nature of the Complainant's disability and its manifestations, along with the nature of the action that the College took with regard to the Complainant, requires OCR to further examine the actions taken by the College. Under Section 504, the "direct threat" standard applies to situations where a college proposes to take adverse action against a student whose conduct resulting from a disability poses a significant risk to the health or safety of the student or others. A significant risk constitutes a high probability of substantial harm and not just a slightly increased, speculative, or remote risk. In a "direct threat" situation, a college needs to make an individualized and objective assessment of the student's ability to safely participate in the college's program, based on a reasonable medical judgment relying on the most current medical knowledge and/or the best available objective evidence. The assessment must determine the nature, duration, and severity of the risk; the probability that the potentially threatening injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will sufficiently mitigate the risk.

The College asserted that the Complainant posed a threat of substantial harm to herself and possibly others. Dean Olds said that she made the decision to involuntarily withdraw the Complainant for medical reasons based on the recommendation of the Director of Counseling Services, who in his clinical judgment determined that "a collegiate residential environment was not an appropriate environment" for her at that time and that she needed a "less stressful setting." The Director told OCR that he based his determination on the frequency and increasing severity of the Complainant's cutting episodes over a short period of time and on the impact those episodes had on other students in the dormitory. When the Complainant cut herself while in her dormitory, she called other students for assistance. At least one student met with the Director to express his concern regarding the Complainant's self-injurious behavior, and other students had expressed to College personnel that they were upset by the incidents. The Director further stated that the Complainant had a history of self-injury and had recently injured herself and he was afraid she was going to kill herself.

OCR has long made clear that nothing in Section 504 prevents educational institutions from addressing the dangers posed by an individual who represents a "direct threat" to the health and safety of self or others, even if such an individual is a person with a disability, as that individual may no longer be qualified for a particular educational

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program or activity. However, colleges must take steps to ensure that disciplinary and other adverse actions against persons posing a direct threat are not a pretext or excuse for discrimination. Due process requires a college to adhere to procedures to ensure that students with disabilities are not subject to adverse action on the basis of unfounded fear, prejudice, or stereotypes. A college may inquire into a student's medical condition where the college, on a nondiscriminatory basis, believes that a student represents a direct threat to self or others. A nondiscriminatory belief will be based on a student's observed conduct, actions, and statements, not merely knowledge or belief that the student is an individual with a disability. In exceptional circumstances, such as situations where safety is of immediate concern, a college may take interim steps pending a final decision regarding adverse action against a student as long as minimal due process (such as notice and an initial opportunity to address the evidence) is provided in the interim and full due process (including a hearing and the right to appeal) is offered later. OCR accords significant discretion to decisions of post-secondary institutions made through a fair due process proceeding.

However, there is evidence that the Director and Dean Olds made the decision to involuntarily withdraw the Complainant even before she had her second severe cutting episode, which prompted the hospital's psychiatric evaluation and suicide precautions. Dean Olds called the Complainant's family members to come and remove her from campus during the day on September 17, 2001, and the Complainant did not have her second severe cutting incident until the night of September 17. The Complainant was released from the psychiatric hospital a day and a half later, after a psychiatrist determined that she was not suicidal. The Complainant stated that she and the psychiatrist had developed a treatment plan prior to her release and that she told the Residential Life Coordinator about the plan when he sought her out on campus. The Residential Life Coordinator says that the Complainant did not show him a copy of the treatment plan, but the Complainant says that she did not have an opportunity to discuss it further because the Residential Life Coordinator then told her that her parents were there to assist her in packing her belongings and she only had 30 minutes before she had to leave campus. The Director also did not talk to the Complainant's previous psychologist to get his medical opinion before he made his determination, nor did he take into account the Complainant's alleged particular stressor, the imminent arrival of her parents on campus due to the College's inadvertent invitation to them. The College did not consider any alternatives less severe than withdrawal from all College programs as a modification for the Complainant, such as whether she was still qualified to participate in the academic program even if she may not have been qualified to participate in the College's housing program,² or whether her parents could be requested not to visit during Parents' Weekend. The College never claimed, and OCR found no evidence, that the academic environment was a causal factor in the Complainant's self-injurious behavior.

² OCR's investigation did not locate any off-campus mental health treatment living arrangements convenient to the College that would have enabled the Complainant to continue participating in the academic program. However, we note that the College did not address this possibility while making its decision to withdraw her.

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OCR is concerned that, while the College may have had reason to believe that the Complainant was a direct threat to herself³ on campus, there is inadequate evidence to show that it adhered to due process principles inherent in Section 504's direct threat standard in making its determination.⁴

The College informed OCR that it has no written involuntary withdrawal procedures, but that in situations like the Complainant's, where the College believes that a student needs a withdrawal for medical reasons, its practice is to follow the procedures for voluntary withdrawals or leaves of absence. The College's *Student Handbook* contains procedures for voluntary withdrawals and leaves of absence under the "Academic Regulations" section. The College used its form for voluntary withdrawals or leaves of absence to process the Complainant's administrative withdrawal for medical reasons. However, this form does not appear to be applicable to involuntary withdrawals, as demonstrated by the College's failure to follow the procedures for that form as described in the *Student Handbook*: "Students who are withdrawing will be asked to complete a withdrawal form." Instead, the College completed the form for the Complainant without her knowing about it until after it took effect. "Students considering leaves of absence ... need to meet with a member of the student life staff to work out the specific arrangements." The College's Residential Life Coordinator told the Complainant that she had to leave campus immediately because she was being withdrawn for medical reasons, but nobody else met with her to "work out the specific arrangements" and she received no paperwork on the matter before she had to leave campus. The Residential Life Coordinator told OCR that normally he would bring a student who is being involuntarily withdrawn to the Dean of Student Life for processing, but he was given the responsibility for informing the Complainant about her withdrawal because the Dean was not on campus at the time. The Complainant did receive a pro-rata refund of her tuition and room and board charges afterward, however, as provided in the withdrawal procedures.

Because the College referred to the Complainant's treatment as an administrative withdrawal for medical reasons, OCR looked to see if the College followed its administrative withdrawal procedures instead. The *Student Handbook* addresses administrative withdrawals under the "Administrative Sanctions" description of the disciplinary violations section:

In order for the community to pursue its social and academic endeavors without unwarranted disruptions, certain administrative sanctions, such as administrative withdrawal, may be imposed at the discretion of the college administration. An administrative withdrawal allows the president and/or the dean of student life the authority to withdraw a

³ As previously noted, the College has asserted that the Complainant possibly posed a threat of harm to others as well. However, the College referred only to concerns of other students, not evidence of a significant risk to the health and safety of other persons, so OCR need not address this alternative. In any case, the College did not consider any alternatives less severe than withdrawal that could have relieved the other students' concerns.

⁴ OCR makes no comment on whether the outcome of the College's decision making was inappropriate or would have been the same or different if the College had adhered to due process principles.

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student from the college if the continued presence of the student on campus constitutes a danger to the individual, to others or to property.

The *Student Handbook* also addresses "Administrative Removal from Residence Hall" under the same section:

The dean of student life or the director of residential life has the authority to remove a student from college housing ... when there is evidence that continued presence of a student in the residence hall threatens the well-being of that individual, the well-being of others or their property or would be a continuing disruption to the college community.

The College did not charge the Complainant with any disciplinary violation, so it is not apparent that a judicial procedure would apply to the Complainant; yet the College did use its discretion to withdraw her after determining that she constituted a danger to herself or others. Appeals of either of these administrative withdrawals are considered by the Disciplinary Appeals Board, made up of students and faculty members, but the Complainant was instructed to appeal to the Associate Academic Dean.

OCR is concerned that the College does not have formal procedures for involuntary student withdrawals for medical reasons, as in the Complainant's situation, and did not follow any appropriate existing procedures. Although the College advised OCR that it followed the same practices for the Complainant as it has for other students whom it deemed in need of medical withdrawals, we are concerned that the College's lack of clear procedures for any student who is being involuntarily withdrawn contributed to a lack of due process in this case. Furthermore, the medical withdrawal practice the College did apply in the Complainant's situation did not provide the Complainant with minimum due process, such as notice and an opportunity to present evidence on her own behalf. Even if the College administratively withdrew the Complainant for immediate safety reasons, as the College contends, the College did not first provide the Complainant with notice of the withdrawal and the opportunity to challenge the truth and accuracy of the College's determinations about her behavior and its perceived dangerousness. It also did not determine whether any interim measures were available that would address its concerns about the Complainant's safety or that of other students pending full due process comparable to the due process provided to other students in withdrawal or leave situations.

Furthermore, an educational institution must not discriminate on the basis of disability in establishing conditions under which a student can return after having been withdrawn from any of the institution's programs, whether academic, housing, both, or other. While the institution has discretion in fashioning return conditions, its discretion is not unlimited. Educational institutions cannot set as a condition for readmission that a student's disability-related behavior no longer occurs, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications. Instead, what conditions a student must meet so as to no longer pose a direct threat should be

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determined on an individual basis. Hence, an educational institution may require as a precondition to a student's return that the student provide documentation that the student has taken steps to reduce the previous threat (e.g., followed a treatment plan, submitted periodic reports, granted permission for the institution to talk to the treating professional).

The withdrawal form completed by the College for the Complainant on September 19, 2001, specified that she would need supporting documentation from a therapist and approval from the Director of Counseling Services in order to return. What the Director would look for before allowing the Complainant to return is set forth in his October 1, 2001, memorandum to Dean Olds. The Director recommended that the Complainant be permitted to return to the College after the documentation from her therapist indicates that she is no longer engaging in self-injurious behavior. Further, in a telephone interview, the Director told OCR that the Complainant could be readmitted to the College if she provided documentation that she has received treatment/therapy; that the self-injurious behavior has gone into "extinction" or is no longer present; and that she is ready to return to college. The College stated that it has imposed similar return conditions on other students with psychological disabilities in their medical withdrawals as well.

OCR is concerned that the return conditions set by the College for the Complainant (and, perhaps, other involuntarily withdrawn students) are overbroad and inconsistent with Section 504. For example, the College required that the self-injurious behavior stop completely. Not all self-injurious behavior may be sufficiently serious as to constitute a direct threat. Indeed, even the Director originally felt that the Complainant's behavior was not serious enough to require withdrawal immediately.

OCR also looked to see what procedures the Complainant had available to her at the College after she was involuntarily withdrawn to address her concern that the action taken against her was discriminatory. The Section 504 regulation, at § 104.7, mandates that educational institutions have grievance procedures that incorporate appropriate due process standards and provide prompt and equitable resolution of disability-based complaints. The College's *Student Handbook* contains grievance procedures for harassment and academic issues, but no other references to procedures for discrimination complaints, including ones on the basis of disability. The 1995 Policy on reasonable accommodations for students with disabilities, which has never been distributed to students, states that students should follow the complaint procedures in the *Student Handbook*, although it is unclear what these are, as noted above. Moreover, the Complainant raised the issue of possible disability discrimination with both Dean Olds and Dean Hood in the weeks after she was involuntarily withdrawn, yet neither dean directed the Complainant to any grievance procedures. Dean Olds told OCR that the College does not have specific disability grievance procedures, but because the College is small, it channels appeals and complaints up through the College's organizational structure instead. Hence, any requests for review of Dean Olds' decisions are directed to her supervisor, the College's Executive Vice President, but in the Complainant's case the Executive Vice President delegated his authority to Dean Hood, to whom Dean Olds directed the Complainant for appeal of her involuntary withdrawal. Neither of the deans

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addressed the Complainant's disability discrimination issue in any of their responses to the Complainant.

OCR is concerned that the College is not meeting the Section 504 requirement for offering appropriate grievance procedures.

In order to address OCR's above-stated concerns, the College has voluntarily agreed to enter into a Commitment to Resolve (CTR) (copy enclosed), which, when implemented, will resolve the concerns. The CTR was signed on March 5, 2003. OCR will monitor implementation of the agreement. If the College fails to carry out its commitments, OCR will reopen the case and resume its investigation.

Counseling Services

The Complainant also alleged that the counseling services provided to her by the College as a result of her disability were inadequate.

Background

The College makes its counseling services available to all students, and it has two counselors on staff. According to the Complainant, within the first week after arriving on campus, she made an appointment with the Director of Counseling Services. The Complainant stated that her reason for making an appointment was to request counseling, to inform him of her emotional disability and symptoms, and also to provide her medical history.

The Complainant asserted in her complaint that the Director was irresponsible and abusive toward her. At the first meeting, the Director asked to have an intern sit in on the session. Although the Complainant felt this was inappropriate, she and the Director agree that she gave her consent. The Director recalls that he discussed the issue of a psychiatrist or psychologist with the Complainant, but she did not have health insurance that would cover the cost. The Complainant stated that during that session the Director's questioning was very aggressive, and she was not comfortable with his method. Also, during the first session the Director suggested a therapeutic technique called Eye Movement Desensitization and Reprocessing (EMDR) and gave her a book to read about the technique. The Complainant stated that although she told the Director that she was not comfortable with the use of EMDR and felt that it was not appropriate for someone with a dissociative disorder, he ignored her concerns and continued to press for EMDR. The Complainant further stated that in her subsequent dealings with him, the Director was aggressive and had a physically threatening manner, which continued to intimidate her and cause her undue stress. The Director acknowledged to OCR that he knew the Complainant was not very comfortable with him.

When the Complainant was discharged from the emergency room after treatment for cutting she had inflicted on herself during her depersonalization episode on September 8, 2001, the Director was there to take her back to campus because the hospital had

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contacted him as the on-call contact person for the College. The Complainant stated that she was nervous about the Director taking her back to the College and believed that he had overstepped his bounds as a counselor. According to the Director, the Complainant appeared to be doing well and agreed to see him on September 10. However, the Complainant later rescheduled the appointment, and, after consulting with her former psychologist, she decided to no longer see the Director for counseling.

When the Director called the Complainant a few days later to ask her to come in, the Complainant told the Director that she did not wish to see him anymore, but when he asked her to return the book he had lent her, she returned the book to him at his office. According to the Complainant, because the Director was intimidating, she took a friend with her when she returned the book. When they arrived, the Director insisted that she sit down and he attempted to close the door. When the Complainant requested that the door not be closed, the Director allegedly ignored her request. According to the Director, the Complainant informed him when she returned the book that she would no longer be making appointments with him. The Director stated that when he asked the Complainant if she wanted to see the other counselor at the Counseling Center instead, her response was that she did not need one. However, the Complainant told OCR that she was about to request another counselor when she had the second severe cutting incident and was involuntarily withdrawn from the College.

Analysis

Educational institutions are not obligated to provide counseling services to students, but when they do choose to offer those services, Section 504 requires that they be provided in a nondiscriminatory manner. In the instant case, the Complainant is not alleging that students without disabilities were treated better than she was.

The College offered the Complainant the same counseling services it offers to all students. There was no evidence presented to indicate that the Director, a therapist/licensed clinical social worker, was unqualified to provide counseling services. In a telephone interview, the Director informed OCR that he told the Complainant that EMDR was a beneficial treatment for post-traumatic stress syndrome, and the College documented that the Director had at least 40 hours of training in EMDR. Differences in opinion or personality are not sufficient grounds for determining adequacy of service. Moreover, generally, the adequacy of counseling services is beyond OCR's purview. Further, the evidence indicates that the College offered another counselor to the Complainant, but she declined the offer. Based on the above information, OCR has determined that there is insufficient evidence to substantiate the Complainant's allegation that the counseling services provided by the College were inadequate.

This concludes OCR's consideration of the allegations, and OCR is closing the complaint effective the date of this letter. This determination letter addresses only the issues discussed herein and should not be construed to cover any other issues regarding compliance with Section 504.

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You are advised that no recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one had made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records. 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 personal privacy.

We wish to thank the College and its staff for the cooperation and courtesy extended to us as we worked to achieve resolution in this case. If you have any questions about OCR's determination, please contact Janice Alexander, the investigator assigned to the case, at (202) 208-7670.

Sincerely,



Sheralyn Goldbecker
Team Leader

Enclosure

(b)(6),(b)(7)(C)

COMMITMENT TO RESOLVE
Guilford College, North Carolina
OCR Complaint # 11-02-2003

To resolve the allegations in the above-referenced complaint filed with the U.S. Department of Education, Office for Civil Rights (OCR) under Section 504 of the Rehabilitation Act of 1973 (Section 504), Guilford College (College) voluntarily agrees to the following commitments. This Commitment to Resolve is not intended to be, nor should it be construed as, a finding by OCR of a violation of Section 504 by the College.

1. The College will revise its disability policies to clarify the rights and responsibilities of students with mental or psychological disabilities and whom they should notify about a need for disability services, and the College will publicize the revised policies through appropriate mechanisms. The College will provide OCR with a draft of the policy revision by July 1, 2003. OCR will review and comment on the draft, and the College then will finalize and publicize the policy revision within thirty (30) days of receiving OCR's comments. The College will provide OCR with documentation that it has revised and publicized the disability services policy within ten (10) days of the publication.
2. The College will develop and publicize policies and procedures on student disability discrimination complaints. The College will provide OCR with a draft of the policies and procedures by July 1, 2003. OCR will review and comment on the draft, and the College then will finalize and publicize the policies and procedures within thirty (30) days of receiving OCR's comments. The College will provide OCR with documentation that it has developed and publicized the new disability discrimination complaint policies and procedures within ten (10) days of the publication.
3. The College will revise its policies and procedures to reflect that, in determining whether a student with a mental or psychological disability is a "direct threat" to self or others, the College will conduct an individualized and objective assessment. This assessment will also determine whether the threat can be reduced sufficiently by reasonable modification. The assessment should take into account the nature, duration, severity of the risk and the likelihood, imminence, and nature of future harmful conduct. The assessment can be done through contact with persons who are familiar with the student's disability or who have treated or are presently treating the student and should be based on reasonable medical judgment. The assessment will take place before the College places the student on administrative leave or involuntary withdrawal for medical reasons.

The College will provide OCR with a draft of the policies and procedures revisions by July 1, 2003. OCR will review and comment on the draft, and the College then will finalize and publicize the revision within thirty (30) days of receiving OCR's comments. The College will provide OCR with documentation that it has revised and publicized these policies and procedures within ten (10) days of the publication. The College also will provide OCR with documentation that it has conducted an individualized and objective assessment of direct threat in all situations involving

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Guilford College, North Carolina
OCR Complaint # 11-02-2003

publicized these policies and procedures within ten (10) days of its publication. The College also will provide OCR with documentation that it has conducted an individualized and objective assessment of direct threat in all situations involving administrative leave/involuntary withdrawal for mental or psychological reasons in 2003. The College will provide documentation for the Spring 2003 semester by June 30, 2003, and for the Fall 2003 semester by December 31, 2003.

4. The College will immediately stop the practice of requiring as a condition of return following a withdrawal or leave of absence that a student be no longer engaging in self-injurious behavior, unless that behavior creates a direct threat that cannot be eliminated through reasonable modifications. Instead, the College may require as a return condition that a student establish that s/he is taking steps to mitigate any direct threat to self or others.

The College will provide OCR with documentation that it has set reasonable return conditions, consistent with direct threat standards, for students with mental or psychological conditions who are placed on administrative leave/involuntary withdrawal for medical reasons or who request a voluntary withdrawal or leave of absence in 2003. The College will provide documentation for the Spring 2003 semester by June 30, 2003, and for the Fall 2003 semester by December 31, 2003.

5. By August 15, 2003, the College will provide training to all appropriate College personnel on all of the above policy and procedural changes.

The College will provide OCR with documentation by September 1, 2003, that it has provided such training. The documentation should include information on the person(s) who conducted the training and who attended the training.

6. By July 1, 2003, the College will remove or correct any references to involuntary withdrawal in the Complainant's records if:
- reconstruction of the September 2001 decision to involuntarily withdraw the Complainant through an individualized determination shows that the withdrawal was not warranted under direct threat standards at the time it was made; or
 - reconstruction of the decision is not possible.

By April 14, 2003, the College will provide OCR documentation of the reconstructed decision or an explanation as to why reconstruction was not possible, along with documentation of any removals from or corrections of the Complainant's records.

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Guilford College, North Carolina
OCR Complaint # 11-02-2003

7. If the Complainant decides to apply for return to the College, the College will consider her application under nondiscriminatory standards, as described herein, and in a timely manner.

The College will provide OCR documentation of its decision about the Complainant's return within thirty (30) days of the decision.

FOR GUILFORD COLLEGE:


Kent Chabotar, President

3/5/02
Date