



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION I  
5 POST OFFICE SQUARE, 8<sup>th</sup> FLOOR  
BOSTON, MASSACHUSETTS 02109-3921

August 21, 2017

President Helen G. Drinan  
President's Office, C202  
Simmons College  
300 The Fenway  
Boston, MA 02115

Re: Complaint No. 01-16-2113  
Simmons College

Dear President Drinan:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Simmons College (College). OCR investigated whether the College discriminated against a student (Student) in the online Masters of Social Work program by failing to provide her with appropriate academic adjustments to accommodate her disability. Specifically, OCR investigated whether the College failed to provide appropriate academic adjustments when it refused to provide her extensions on papers and projects as an approved accommodation.

OCR investigated this allegation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation found at 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination based on disability in programs and activities operated by recipients of Federal financial assistance from the United States Department of Education (Department). The College receives Department funds and is subject to the requirements of Section 504 and its implementing regulations.

OCR gathered evidence through a review of documents and information provided by the Student and the College, as well as interviews with the Student and College employees. OCR determined that there was sufficient evidence to support a conclusion of noncompliance with Section 504 with regard to the College's treatment of the Student. It also found evidence of broader noncompliance in the College's practices and procedures. As explained below, the College has agreed to enter into a Resolution Agreement to address the compliance violations that OCR identified during its investigation. OCR's investigation and findings are summarized below.

### **Legal Standard**

The Section 504 regulations, at 34 C.F.R. § 104.3(j)(1)(i), define an individual with a disability as one who has a mental or physical impairment that substantially limits one or more major life

activities. Under the Section 504 regulations, at 34 C.F.R. § 104.3(l)(3), with respect to postsecondary education services, a qualified individual with a disability is one who meets the academic and technical standards requisite to admission or participation in the recipient’s education program or activity. The Section 504 regulations, at 34 C.F.R. § 104.43(a), provide that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any postsecondary education program of a recipient.

The Section 504 regulations, at 34 C.F.R. § 104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued, or to any directly related licensing requirement, will not be regarded as discriminatory.

Under the requirements of Section 504, in order to receive accommodations at the postsecondary level, a student with a disability is obligated to notify the recipient of the nature of the disability and the need for a modification, adjustment, aid or service. Once a recipient receives such notice it has an obligation to engage the student in an interactive process concerning the student’s disability and related needs. As part of this process, the recipient may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

### **Factual Findings**

#### ***The College’s Policy on Granting Extensions on Papers and Projects as an Accommodation***

As of the spring semester 2016, the College had a blanket policy pursuant to which no students could have “extended time for papers and projects” as an accommodation.<sup>1</sup> When interviewed by OCR, XXXXXXXXXXXXXXXXXXXXXXX stated that the College did not grant across the board extensions and he could not recall any time in which the College had approved “extended time for papers and projects” in a student’s accommodations letter. The XXXXXXXXXXXXXXX, the only other person in that office responsible for determining accommodations, confirmed this practice. She stated that the College did not offer extensions for papers and projects because, in certain classes, such extensions might alter the fundamental nature of a course. No one at the College would examine the requirements of the individual class, or consult with the instructor, to determine if such extensions would alter the fundamental nature of the course. Rather, because such extensions might have, in some cases, altered the fundamental nature of the course, no student was granted the accommodation in any course.<sup>2</sup>

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<sup>1</sup> However, the College did offer and allow extra time *on quizzes and exams* as an accommodation.

<sup>2</sup> Although the College did not undertake a course-by-course analysis with regard to this accommodation, it did have a procedure for determining whether an accommodation or modification altered an essential

According to both the XXXXXXXXXX and XXXXXXXXXXXXXXXX, instead of offering the accommodation, the College encouraged students to talk with their professors prior to the deadline, to see if they might be amenable to short extensions on some papers or projects. Both the XXXXXX and XXXXXXXXX also stated that if the professors were not amenable to extensions, the students could come back to them for more assistance, which could involve having someone from the Disability Services Office (DSO) speak to the professor directly. However, the accommodation would have never been formally listed in the student's letter.

During the course of OCR's investigation, on October 12, 2016, the XXXXXXXXXXXXXXXX for the College circulated a memorandum acknowledging its practice of automatically assuming that certain academic adjustments would fundamentally alter the essential requirements of a course of program, and clarifying that the College should not make such an assumption absent an assessment of the individual student and the individual course.

### *The College's Treatment of the Student*

The Student began the online, accelerated Masters of Social Work program at the College in January 2016. According to the Student, she first contacted the DSO at the end of January 2016. She informed OCR that she called twice and left messages with the DSO, though her calls went unreturned. It was not until her third attempt that she reached a person who scheduled an appointment for her to meet with XXXXXXXX.

Both the Student and XXXXXXXX report speaking to each other on February 16, 2016. The Student then submitted documentation to the DSO in late February, XXXXXXXX and XXXXXXXXXXX met to determine the Student's accommodations, and XXXXXXXX and the Student spoke again on March 9, 2016.

While they agreed on the time frames of the two phone calls, the Student and XXXXXXXX had somewhat different recollections of the substance of these calls. It is undisputed is that XXXXXXXX told the Student that the College did not offer extensions on papers and projects as an accommodation.

However, the Student recalled also being told that she should write to her professors, mention that she was registered with DSO, and that DSO's policy did not cover extra time on papers and projects, but that she might need extra time. She did not recall being told that she could come back to DSO for assistance if a professor would not provide an extension; rather, she felt she was being told that DSO had done all it could do and she was on her own with regard to her professors. In contrast, XXXXXXXX recalled modeling how to have a conversation with faculty regarding extensions on assignments and inviting her to talk with XXXXXXXX again if she had problems. XXXXXXXX took notes of each call with the Student. Those notes state that XXXXXXXXXXX said DSO does not approve extensions on papers and projects, that he discussed how other students had successfully advocated for themselves to receive accommodations, and

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requirement of a course. The procedure is documented in a publication entitled "Core Curriculum" and also referred to elsewhere as "Suggested Guidelines for Determining Essential Components of a Course or Program." While the document was previously available on the College's website, the College reported that it was inadvertently omitted during updates to the site and, therefore, not publicly available during the 2016 Spring semester.

explained the “conversation that a student can have with the course instructor to request extensions on a case by case basis.” The notes are silent as to whether or not XXXXXXXX told the Student that she could seek further assistance from the DSO if a professor would not grant an extension.<sup>3</sup>

The Student did not contact DSO again until May 2, 2016, when she learned that she was being dismissed from the program. Further, no one from DSO contacted the Student during the semester.<sup>4</sup>

One of the courses in which the student was enrolled was XXXXXXXXXXXXXXXXXXXXXXXX (XXXXX Course). The XXXXX Course had three graded components: a live session, asynchronous instruction, and a paper. The paper encompassed three assignments in one: first, students submitted what was essentially the introduction (First Paper); then, students submitted the literature review with references (Second Paper); and, finally, the first two writings were combined, with some additional material, into the last submission (Third Paper).

The Second Paper was due March 2, 2016. On February 29, 2016, the Student emailed the professor for the course (Professor) and requested an extension to the weekend (i.e., March 5 or 6, 2016). In that email, the Student mentioned that she was in the process of registering with the DSO. The Professor responded that same day and said that she understood.

On Wednesday, March 9, 2016, the Student emailed the Professor again asking for additional time. The Professor did not respond until Tuesday, March 15, 2016 when she said that she would accept the paper through the next day, Wednesday, March 16, 2016 at 9 a.m. EST. However, she also said that she would “need to assess a penalty” that “may well result in a total grade that is too low for you to move forward, depending on your performance for the remainder of the class.” The Student responded that same day, writing that she did not think she could submit the paper in such a short amount of time. She mentioned that the DSO would be sending the Professor a list of approved accommodations, but that it did not cover extensions. She also stated that she was not sure she saw the utility of completing an assignment if she would fail the course regardless. The Professor responded that she did not think it “fair, or even useful” to give open-ended extensions because the Third Paper was built upon the Second Paper. She asked the Student how much additional time she thought she needed and proposed Friday, March 18, 2016 at 5 p.m. EST as a new deadline.

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<sup>3</sup> The Student reported that she felt from XXXXXX’s phrasing that extra time for papers and projects might be available in the on-campus program, and was only unavailable for the online program. OCR found no evidence to support this. There appears to be no dispute that the extra time accommodation was not available regardless of the program.

<sup>4</sup> The College has an appeals process through which a student can appeal the DSO’s determination regarding requested accommodations. See *Grievance of Accommodations*, <https://www.simmons.edu/~media/Simmons/Student-Life/Disability-Services/Documents/Grievance-Policy-and-Procedure-pdf.ashx?la=en> (last visited August 14, 2017). There is no dispute that the Student did not appeal the DSO’s determination. However, given that the Student understood such extensions were not available as a matter of policy, and the DSO’s confirmation of said policy, such an appeal would have been futile.

The Professor emailed again on Friday morning, March 18, 2016 advising the Student that she had not received a response to her email. The Student replied the same day saying she would not be able to submit the paper by the March 18 deadline, but that she could submit it by 8:00 a.m. PST on Monday, March 21, 2016. The Professor responded on Sunday, March 20, 2016, stating that the paper would receive a failing grade for lateness, but she still encouraged the Student to submit it. She also said that she would consider offering the student make-up assignments that could count towards the failing grade.

On March 30, 2016, the Student submitted an outline of the final paper. She acknowledged in her email to the Professor that there was still much work to be done. The Professor did not grade this submission because, according to the Professor, it was not a paper and not responsive enough to the grading rubric for her to assign a grade. The Professor did not provide any feedback to the Student on this submission.

Although the Student continued to attend and participate in the live sessions and complete the asynchronous instruction, she did not submit a final paper. The Student informed OCR that she had gotten no feedback on the outline, felt overwhelmed and hopeless, and believed the Professor had already told her that she would fail the course so she did not see any reason to complete it.

The Professor reported that she followed her standard approach to extensions when working with the Student. She did not treat the Student any differently than she would have treated a student without a disability. Also, while she knew the Student was registered with DSO, she did not know the nature of the Student's disability or how it might affect her ability to complete work on time.

Part of the Professor's standard approach to extensions was her general practice of deducting points for assignments. While she does not employ an exact formula, the Professor said she usually deducts "a couple" percentage points if an assignment is a few hours late, five points if an assignment is a day late, and a letter grade if the assignment is a week late. She was following this standard approach when discussing with the Student how lateness would affect her grade on Paper 2 and the resulting impact on her ability to pass the course. The Student reported that she was aware her grade was dropping every day she could not complete the assignment.

The Student ultimately failed to submit the Second Paper, which was worth 25% of her course grade, and the Third Paper, which was worth 30%. This led to her failing the class and being dismissed from the program.<sup>5</sup>

## **Analysis**

### ***The College's Policy Regarding Extensions on Papers and Projects***

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential

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<sup>5</sup> According to the Handbook of MSW Policies & Academic Guidelines and interviews with various College personnel, if a student fails one class, or has three B-minuses or lower, they are dismissed from the program.

modifications, and exercise professional judgment. Whether a recipient has to make modifications to its academic requirements or provide auxiliary aids is generally determined on a case-by-case basis. Section 504 contemplates a meaningful and informed process with respect to provision of accommodations, e.g., through an interactive and collaborative process between the school and the Student.

Here, the College had a blanket policy of not providing extensions on papers and projects. This policy obviated any individualized assessment of the Student's needs or the requirements of the course, and effectively ended the interactive process, thereby discriminating against, and excluding a student with a disability from the education program in which she was enrolled. Such a policy does not meet the requirements of Section 504 at 34 C.F.R §§ 104.43 and 104.44.

The DSO apparently adopted its policy because it believed such extensions would fundamentally alter the nature of courses. While there may be courses for which an extension is a fundamental alteration, such a determination must be made on a course-by-course basis as part of an individualized assessment.

The Resolution Agreement requires that the College's policy is revised and that the blanket policy prohibiting extensions on papers and projects as an accommodation is discontinued.

### ***The College's Treatment of the Student***

The College also violated the requirements of Section 504 when it applied its blanket policy regarding extensions to the Student. Although the College contends that the Student was afforded a number of extensions and was effectively provided with the accommodation through the extensions from the Professor, OCR's investigation revealed that the extensions were not accommodations as mandated by Section 504. The Student's process of requesting an extension from her Professor varied significantly from how the interactive process should work. Requiring students to request accommodations for their disabilities directly from their professors places them in the difficult and unfair position of having to negotiate for their accommodations with the persons who are ultimately responsible for evaluating and rating their academic performance. Such a process also puts professors in the unfair position of having to provide accommodations when they are not trained in such decision-making and do not have complete information about the student's needs. Individuals appropriately qualified to assess and address the needs of students with disabilities, such as the professionals of a disability services office, should serve as intermediaries between students and faculty so that students are not placed in a position of having to reveal confidential information regarding the nature or extent of their disability and to discuss/negotiate accommodations with their instructors.

OCR's investigation revealed that while the Professor was aware the Student had a disability, the Professor was unfamiliar with the details. Moreover, even if she had been aware of such details, the Professor lacked the expertise or experience to evaluate the Student's needs. While a Student may provide notification of her disability to a Section 504 or ADA coordinator, an appropriate dean, a faculty advisor, or professor, the ultimate determination regarding adjustments or modifications should be made by someone with knowledge of the student's disability and who is properly trained in determining appropriate adjustments or modifications, e.g., XXXXXXXX.

Further, the Professor stated that she handled the Student's requests for extensions just as she would for a student who did not have a disability. She did not consider any additional factors when deciding whether to grant the extension. The Professor stated that she would penalize the Student's grade in the same manner she penalized work deemed to have been submitted late by students without disabilities. The Professor also stated that the Student would be able to make up for the late work by doing additional assignments. A true accommodation for a disability would not result in a grade penalty or additional work. In this instance the College did not provide an accommodation under Section 504 because it did not make an individualized inquiry into the needs of the Student and treated the Student the same as any other student without a disability. The offers of extensions accompanied by penalties and conditioned on the performance of additional work were therefore not accommodations for the Student's disability, and the College's treatment of the Student was not in compliance with Section 504.

The Resolution Agreement requires that the Student is made whole and that the effects of the College's failure to provide her with appropriate academic adjustments are otherwise remedied.

### **Conclusion**

For the reasons explained above, OCR determined that there was sufficient evidence to support a conclusion of noncompliance with Section 504 with respect to: (i) the College's blanket policy regarding extensions on papers and projects as an accommodation, and (ii) the College's provision of accommodations to the Student.

As provided above, after OCR notified the College of its conclusion, the College entered into a resolution agreement (Agreement) that, when fully implemented, will resolve these issues.

Pursuant to the Agreement, the College will: (1) create a policy for providing extensions for papers and projects as an accommodation and effectively train its employees on the implementation of that policy,<sup>6</sup> and (2) remove from the Student's transcript the two grades that were lowered due to the College's failure to provide the accommodation, and refund the Student's tuition for these two courses.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed herein. OCR will notify the Student concurrently.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Student may file another complaint alleging such treatment.

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<sup>6</sup> As described above, the College has already taken steps towards such policy revisions during the course of this investigation.

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

OCR thanks the College for its cooperation throughout the investigation. If you have any questions, please contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or [Catherine.Deneke@ed.gov](mailto:Catherine.Deneke@ed.gov).

Sincerely,

Meena Morey Chandra  
Acting Regional Director *W/P AMM*

Enclosure