



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

November 28, 2017

Frederick W. Clark Jr., Esq.  
President  
Bridgewater State University  
131 Summer Street  
Bridgewater, MA 02325  
By email: fclark@bridgew.edu

Re: Complaint No. 01-17-2092  
Bridgewater State University

Dear President Clark

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Bridgewater State University (the University). The Complainant alleged that the University discriminated against her based on her disability when one of her professors (Professor) requested copies of a medical record and then evaluated the Complainant's request for academic adjustments, rather than allow disability services personnel to evaluate her request. As explained further below, before OCR completed its investigation, the University expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

OCR investigated this complaint under the jurisdiction of (i) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department; and (ii) Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability at certain public entities. The University is subject to these laws because it is a recipient of Federal financial assistance from the Department and is a public institution of higher education.

### **Legal Standards**

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of

disability.<sup>1</sup> The regulation at § 104.44(a) requires a university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. The regulation at § 104.44(d) requires a university to ensure that no qualified individual with a disability is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills. OCR interprets the Title II regulation to require public universities to provide academic adjustments and auxiliary aids to the same extent as required under Section 504.

Universities may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the university. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the university must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the university is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the university's program or impose an undue burden.

### **Factual Background**

The Student reported that, in approximately mid-November 2016, she mentioned to the Professor that she would be getting a neuropsychological evaluation. The Student stated that she raised it with the Professor because she felt she might need some deadlines extended, and the Professor responded by telling the Student to let her know what happened. The Student informed OCR that, a few class meetings later, as she was walking into class, the Professor said to the Student that she needed a copy of the evaluation in order to determine what accommodations the Student needed. The Student stated that this was the first time the Professor referred to undertaking her own determination of whether the Student was eligible for academic adjustments. The Student further stated that during the next class, she gave the Professor the evaluation.

The Professor informed OCR that, in approximately October or November 2016, the Student approached her after class and told the Professor that she thought she might have a disability and was getting an evaluation. The Professor stated that she believed the Student may have mentioned that she might need academic adjustments, but she did not recall any discussion about specific adjustments. The Professor further stated that she did not recall exactly how she responded, but believed she told the Student it was a good idea to get an evaluation if she "thought something was wrong." According to the Professor, the Student came to her office hours approximately a month later and gave her the evaluation. The Professor recalled the

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<sup>1</sup> The University and the Complainant frequently refer to academic adjustments and auxiliary aids as "accommodations." The Section 504 regulation addressing post-secondary education refers to "academic adjustments and auxiliary aids," while the Title II regulation refers to "reasonable modifications." When the term "accommodations" is used in this document, it refers to academic adjustments and auxiliary aids as those terms are used in 34 C.F.R. § 104.44 and reasonable modifications as that term is used in 28 C.F.R. § 35.130(b)(7).

Student saying it was “really, really interesting,” but leaving before the Professor could respond. The Professor stated that she was surprised to receive the evaluation, and that she planned to review it but never did.

In its investigation to date, OCR has not been able to definitively confirm either account. While both the Student and the Professor reported that other students witnessed these encounters, neither could identify any of those witnesses. OCR obtained emails in which the Professor discussed the situation with University personnel several months later (in February 2017), resulting from an inquiry from two superiors (i.e., the Dean of the College encompassing the Professor’s department and the XXXXXXXXXXXXXXXXXXXXXXXX). In those emails, the Professor stated that the Student handed her the evaluation to get extra time for assignments, she had not requested the evaluation, and was surprised when she received it.<sup>2</sup>

During OCR’s investigation to date, it also interviewed XXXXXXXXXXXXXXXXXXXXXXXX XX. Although the Professor’s department was not the subject of this complaint, more than one of the individuals interviewed mentioned that the Professor’s department XXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. Other students had complained that professors in that department were not providing academic adjustments XXXXXXXXXXXXXXXX or not giving students the help they needed. One witness stated that XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XX. One witness reported that the Professor’s department was a department XX XX XXXXXXXXXXXXXXXXXXXXXXXX.

OCR determined that the evidence obtained to date raises concerns as to the University’s compliance with Section 504. Universities must have a system in place to make modifications to their academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating against qualified students with disabilities. Such a system requires an assessment of which modifications are necessary, as well as whether a specific standard or requirement is an essential program requirement that cannot be modified and/or whether the requested accommodation would pose an undue financial or administrative burden for the institution. If this determination is made by university personnel who are unfamiliar with the nature of a student’s disabilities or the needs of that student (e.g., a professor rather than the DRO) a university may not be satisfying its obligations under Section 504 in responding to students’ requests for academic adjustments and/or auxiliary aids.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the University expressed an interest in resolving this complaint. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will resolve the issues raised in the complaint. The terms of the Agreement are aligned with the complaint allegations and are consistent with the applicable laws and regulations. Specifically, the Agreement calls for the University to (i) provide notice to all faculty reminding them that academic adjustments should be determined

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<sup>2</sup> In order to complete the investigation and make a finding, OCR would need to interview University personnel who corresponded with the Professor and the Student about these events.

by the Disability Resource Office,(ii) convene a meeting between the Professor's department and certain administrators to discuss the academic adjustment process, (iii) provide notice to all students registered with the DRO to ensure they understand the role of the DRO, and (iv) inform OCR of any similar concerns during the 2017-2018 school year. OCR will monitor the University's implementation of the Agreement until it has determined that the University has complied with the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

### **Conclusion**

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

If you have any questions, you may contact Civil Rights Attorney Catherine Deneke at (617) 289-0080 or by e-mail at [Catherine.Deneke@ed.gov](mailto:Catherine.Deneke@ed.gov).

Sincerely,

Emma Kim  
Acting Compliance Team Leader

Attachment

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX