



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

August 6, 2020

President Ron Liebowitz
By email: president@brandeis.edu

Re: Complaint No. 01-20-2163
Brandeis University – Heller School of Social Policy

Dear President Liebowitz:

This letter is to advise you of the outcome of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR) against Brandeis University (University) – Heller School of Social Policy (Heller School). The Complainant alleges that the University discriminated against her on the basis of disability. Specifically, the complaint alleges that the University refused to consider the Complainant's request for an accommodation to extend the time granted to complete her doctoral dissertation beyond the standard ten years granted to all students, even after the Complainant took at least one year of medical leave and requested numerous disability-related accommodations. The Complainant acknowledges that in XXXXXXXX, the University's Student Accessibility Services (Accessibility Services) granted her accommodation request to extend the amount of time to complete her dissertation, but only after years of the Heller School telling her – as recently as XXXXXXXX– that granting any extensions on the basis of disability was categorically impossible. The Complainant also alleges that the Heller School has not yet confirmed that it will provide the accommodation as granted by the University. 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 (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. Because the University receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

The Complainant is a Ph.D. candidate at the Heller School who initially enrolled in XXXXXXXX. The Heller School has a rule that the dissertation must be completed within ten years of starting the program. Under the general rule, the Complainant's dissertation would have to be completed by XXXXXXXX.

The Complainant alleged the following in her complaint to OCR. In XXXX, the Complainant informed a disability coordinator at the Heller School that she had XXXXXXXXXX and had missed a few classes because of this medical condition. The Heller School's Disability Coordinator (Heller School Coordinator) suggested that the Complainant wait to document her medical condition until a situation arose where she needed an accommodation. After a severe

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

XXXXXXXXXX episode, the Complainant filed for an accommodation. Specifically, the Complainant formally applied for and was granted medical leave from the Heller School for XXXXXXXX in XXXX. The Complainant alleges that around this time, as she was seeking a medical leave, the Heller School Coordinator told the Complainant that the University's Accessibility Services and its policies did not apply to her because she was a graduate student.

In XXXX, the Complainant filed for an extension to her medical leave because her disability symptoms persisted. The extension was approved by the Heller School. The Complainant XXXXXXXXXXXXXXXXXXXXXXXXXXXX. Around this time, in XXXX, the Heller School involuntarily withdrew her from her program because she did not reapply for a medical leave extension. The Complainant alleges that the Heller School did not try to contact her to inquire about her condition or whether she needed to extend her medical leave.

When she regained her health, the Complainant contacted the Heller School about reentry into the program. The newly appointed Ph.D. Program Director (Program Director) told her that it was too late for her to complete the necessary work towards obtaining her degree given the 10-year deadline, and he informed her that her “time was up.” The Complainant asked if she could apply to extend the 10-year deadline due to her medical leave and subsequent disabling illness. The Complainant’s request for additional time was denied on three different occasions by the Program Director.

The Complainant alleges that rather than considering her request for extension to the 10-year deadline as a disability-related accommodation request, XXXXXX the Program Director directed her XX
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XXXXXXXXXX, which was the end of the 10-year deadline. The Complaint alleges that she complied with steps that the Program Director set forth and eventually a committee at the Heller School readmitted her XXXXXX.

After the Complainant resumed her studies at the Heller School, she continued to request more time to complete her dissertation as an accommodation for her disability. XXXXXXXXXX, the Complainant contacted the University's Accessibility Services, which she alleges that the Heller School's Coordinator had previously told her did not handle requests made by graduate students, to explore options to seek accommodations. The Complainant provided email documentation showing that, as she worked through the University's Accessibility Services process, the Heller School sent her another letter XXXXXXXXXX indicating that she must complete her dissertation by XXXXXXXXXX. In response, she asked whether the letter meant that her request for her extension was being denied again. The Program Director at the Heller School responded: "That is correct. As I informed you before your return, the ten-year limit is absolute. I cannot extend it. Others have asked the Provost and the Dean to do so and have, in every case, been denied. I thought I made this clean already."

In XXXXXXXXXX, the Complainant again contacted the University's Accessibility Services, which had allegedly not made progress or provided a definite response to her request for an extension of time as an accommodation since contact XXXXXXXXXX. The Director of Accessibility Services informed the Complainant that they were working on her case but that

there were complicated policy considerations to consider. On XXXXXXXXXX, the Complainant spoke to the Director of Accessibility Services about her accommodation request, XX. On XXXXXXXXXX, the accommodation was granted. At the time she filed her complaint with OCR, the Complainant's dissertation deadline was extended XXXXXXXXXXXXXXXX. However, the Complainant alleges that the University's Accessibility Services decision did not resolve things with The Heller School, which had not informed her that its policy had changed or that it would honor the accommodation.

In response to the OCR's notice to the University that OCR was investigating the Complainant's allegations, the University emphasized that the Complainant's request for an extension had been granted as an accommodation XXXXXXXXXXXX. The University provided OCR with a letter to the Complainant XXXXXXXXXXXX, from the Director of the University's Accessibility Services, informing the Complainant that her that her accommodation request had been granted and her new dissertation deadline was XXXXXXXXXXXX.

However, the University also acknowledged that the Heller School's policy regarding time to complete a dissertation includes a 10-year time limit with no exceptions. The University provided emails between the Complainant and the Heller School's Program Director demonstrating that the Program Director repeatedly refused to consider her request for an extension to the timeline based on her disability, XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
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XXthe Program Director wrote: "With regard to the 10 year deadline: Program rules on this are explicit and allow no discretion. No extension beyond the 10 years can be allowed. We had a request for such an extension this year and it was ultimately reviewed by the Dean of the Heller School and then University Provost. The extension was denied and so this issue must be understood as decided."

In addition, the University provided email correspondence between the Complainant and the Heller School Coordinator at the Heller School XXXXXX. The correspondence demonstrates that the Complainant inquired whether she should provide documentation to the University's Accessibility Services, at which point the Heller School Coordinator responded that the University's Accessibility Services Office was for undergraduate students, and that the graduate schools handle the process on their own. The Heller School Coordinator directed the Complainant to submit the documents to her. Before OCR completed its investigation of this matter, the University requested to resolve through a voluntary 302 agreement.

Legal Standard

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. 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.

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.

In determining what modifications are appropriate for a student with a disability, the university should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a university has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a university acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. Section 504 envisions a meaningful and informed process with respect to the provision of modifications, e.g., through an interactive and collaborative process between the university and the student. If a university denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the university's objections.

A university is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead, undue burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.

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).

Analysis

Based on the investigation to date, OCR is concerned that the Heller School's policy regarding a 10-year deadline to complete the dissertation with no exceptions for consideration of disability-related requests for accommodations violates Section 504. In addition, OCR is concerned that

the Program Director at the Heller School repeatedly communicated to the Complainant that no requests for an extension to the deadline would be considered by the Heller School, and that Program Director did not direct her to the University's Accessibility Services. OCR is also concerned that staff at the Heller School may have misdirected the Complainant XXXXXX when it advised her that the University's Accessibility Services did not handle requests from Heller School Students, when the Complainant untimely had required to go through Accessibility Services XXXXXX to obtain the requested accommodation.

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 and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the University resulted in the University signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the University's implementation of the Agreement.

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.

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure
cc: Steven Locke