



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION IX
CALIFORNIA

August 26, 2020

VIA ELECTRONIC MAIL

chancellor@brandman.edu

Gary Brahm
Chancellor
Brandman University
16355 Laguna Canyon Rd.
Irvine, CA 92618

(In reply, please refer to case no. 09-20-2004)

Dear Chancellor Brahm:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has resolved the above-referenced complaint against Brandman University (University). OCR investigated whether the University discriminated against a Student on the basis of her disability.¹ Specifically, OCR investigated whether: (1) the University failed to provide the Student with her approved accommodations and services and to make modifications to academic requirements that were necessary to ensure that such requirements do not discriminate or have the effect of discriminating against her on the basis of disability; and (2) whether the University retaliated against the Student for complaining that she was not provided such accommodations, services, and modifications.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination, including retaliation, on the basis of disability in programs and activities operated by recipients of federal financial assistance. As a recipient of federal financial assistance, the University is subject to Section 504 and its implementing regulations.

OCR gathered evidence interviewing the Student and employees of the University and by reviewing documents and statements provided by the University and the Student. OCR found that the University violated Section 504 and its implementing regulation with respect to issue 1. OCR also identified compliance concerns with respect to issue 2. Before OCR had completed its

¹ OCR previously provided the University with the identity of the Student. We are withholding her name from this letter to protect her privacy.

investigation of issue 2, the University voluntarily agreed to resolve the concerns OCR identified. The facts gathered, legal standards, and reasons for our determinations are summarized below.

Facts Gathered

Background

The Student has been a graduate student in the Master of Social Work (MSW) program at the University since fall 2018; she also attended the University from 20XX-20XX and received her undergraduate degree from the University in 20XX. The Student told OCR that she has been “legally blind since birth.”

The MSW Program Director told OCR that 2018-2019 was the first year that the University offered the online MSW program, and that course material and instruction are provided via an online learning platform (online platform). According to the University’s catalogue, its academic year is divided into three trimesters, each of which includes two eight-week sessions. The MSW Professor told OCR that the eight-week sessions were accelerated.

Approved Accommodations

The Student stated that before her MSW program classes began in fall 2018, she contacted the University’s Office of Accessible Education (OAE) and requested accommodations for her disability. The Student’s March XX, 2019 faculty notification letter included her approved accommodations of double time on all time-constrained, single-sitting quizzes and exams; e-textbooks; and an extension of time to complete assignments and projects. With regard to the extension, the notification letter further stated that the Student must contact the faculty member prior to the assignment due date to discuss the accommodation and arrange its extended due date, and that if the requested extension is greater than seven days, “the faculty member must consult with OAE before finalizing the [extension].”

Assistive Technology

The University stated that it also provided the Student with assistive technology including two accessible software platforms; a screen-reader and screen magnifier software; and a media player for audio files including audiobooks.

Complaints During Fall 2018

The Student told OCR that she began experiencing difficulty accessing course materials via the online platform soon after she started the MSW program in Fall 2018. On November X, 2018, the Student emailed the University’s Ombudsman and stated that she felt discriminated against as a student with a disability because, according to the Student, the University’s Information Technology (IT) Department did not have staff trained in her assistive technology. The Student

stated that the absence of trained staff caused her delays in accessing her course materials. The Student told OCR that the Ombudsman did not do anything in response to her complaint.

The University's Compliance Director told OCR that he is responsible for the University's compliance with Section 504; as well as that he is one of two people in the Ombudsman's office, where his role is to receive student complaints, decide whether they should be formal complaints, and if so, refer them to the official University grievance process, and if not, help resolve them. The Compliance Director told OCR that when he receives a student complaint related to disability accommodations and services, he first refers the student to the OAE to see if it can resolve the issue. However, according to the Compliance Director, if a student uses the word "discrimination" to describe their complaint, he explains the University's "formal complaint process" including that a student should email their complaint to civilrightscomplaint@brandman.edu. The Compliance Director told OCR that information about this formal complaint process is posted online in the student handbook/course catalog, as well as on the intranet, for currently enrolled students. The Compliance Director further stated that the complaint information posted online did not state that it was for disability-based discrimination complaints, specifically; rather, it stated that a student could make a "non-sex and gender based complaint" using the civil rights complaint email address mentioned above.

OCR reviewed information on the University's website about the process for making a complaint of disability-based discrimination. The University's online Complaint Policy² stated that students with complaints regarding their "University experience" should contact the Office of Student Concerns (OSC) for informal assistance including appropriate resources to help resolve conflicts and disputes. A separate section of the University's website, which pertained to sex and gender based harassment, included the email address cited by the Compliance Director as the way for students to submit Title IX sex discrimination complaints, only.³ The OAE's Policy Statement, which was available as a PDF online,⁴ stated that complaints related specifically to services for students with disabilities provided by OAE should be immediately brought to the attention of the OAE Assistant Vice Chancellor (OAE Director), who "will review the matter and attempt to informally resolve the situation. In the event that the matter cannot be resolved, students have the right to use the University's grievance/appeal procedures. All grievances or appeals must be in writing.... For matters involving a course accommodation or a requested service, the director will review and investigate the complaint. The investigation while informal but thorough, will afford the student an opportunity to submit evidence relevant to the complaint. In a timely manner [OAE] will review the matter and respond to the student."

² <https://www.brandman.edu/about-brandman/consumer-information/complaint-policy>

³ <https://catalog.brandman.edu/general-information/>

⁴ https://www.brandman.edu/-/media/documents/disabilityservicesdocuments/oae_policy_statement.pdf?la=en

The OAE Policy Statement did not specify where these grievance/appeal procedures were available, including whether they were also the University's Complaint Policy.

On November X, 2018, the Compliance Director emailed a response to the Student, thanking her for her patience, stating that the University was "researching and working on putting additional resources into assistive technology", and that he would share her concerns with "senior leadership." The email did not include whether the Compliance Director had referred the Student to the University's Complaint Policy or to OAE.

On November XX, 2018, the Student again emailed the Ombudsman's office and stated that she was being discriminated against and that the University needed to provide modifications to assignments when they were impacted by a student's disability; the Student also stated that she was contemplating contacting OCR. On November XX, 2018, the Compliance Director forwarded the Student's November XX email to the Associate Vice Chancellor for Enrollment and stated that it was the Student's second email to him, and that she was "mentioning claims of disability discrimination." The University did not provide OCR with information about whether the Compliance Director or the Associate Vice Chancellor for Enrollment referred the Student to the University's formal complaint process.

Accommodations of e-Textbook and Double Time

The Student told OCR that she was not provided with her e-textbook in her Social Work (SWOK) XXX class during spring 2019 due to "copyright issues," but that she was nevertheless expected to incorporate material from the reading into her homework assignments. On January XX, 2019, the OAE Vice Chancellor emailed the Student stating that he was looking into getting her SWOK XXX textbook uploaded to a software platform. A University witness, who told OCR that he was responsible for obtaining electronic versions of the Student's books, however, stated that it was never the case that the Student did not have her required textbooks, and that he either uploaded them to her software platform accounts or, if there was a problem, manually scanned and converted them to PDFs for her. The witness told OCR that he did not recall any issues with SWOK XXX, specifically.

On January XX, 2019, the Student emailed her SWOK XXX professor and stated that she had only partial access to the book for the course.

The Student told OCR that during May 2019, she did not receive her e-textbook accommodation for SWOK XXX in a timely manner. The Student told OCR that this was because an OAE staff member uploaded her SWOK XXX e-textbook to a software platform online, whereas she used the software platform's application because it had descriptive audio (and the online version did not). The University acknowledged that there was a delay in providing the Student with this e-textbook because of compatibility issues between the two software platforms, but told OCR that the Student

was provided with an alternate version of the text while the issue was being identified and remedied.

The Student told OCR that she also did not receive her approved accommodation of double time on online quizzes during her Spring 2019 classes because her professors, who were responsible for adjusting the quiz timer settings on the online platform, did not always do so. The Student stated that as a result, she would take a quiz, be “timed out” of it before finishing, email her professor and request that they change the timer settings, and then have to restart and retake the quiz the following day. The Student stated that she sometimes had to email her professors multiple times before they changed the quiz timer settings.

The University told OCR that faculty provided the Student with her double-time accommodation, and provided OCR with copies of the Student’s February XX, 2019 email to her SWOK XXX professor requesting that she adjust the settings to provide additional time on a quiz; as well as with the professor’s February XX, 2019 email response stating that she had done so. The University also provided OCR with copies of the Student’s March XX, 2019 email to her SWOK XXX professor requesting that she adjust the quiz timer settings to provide double time on online quizzes; as well as with the SWOK XXX professor’s March XX, 2019 email response stating that she had done so as well, as had removed time restrictions from all future quizzes.

According to emails provided by the University, on March X, 2019, the MSW Professor sent an email to the Student and other students in her class that included a web link to a video. The Student called the Compliance Director and the Campus Director and complained that the video and other course content was not accessible. Later that day, the Campus Director emailed the Compliance Director and OAE Director and stated that the Student had complained to him that her instructors were not following the plan she had in place with accessibility services and that this was “discrimination.” On March X, 2019, the Compliance Director emailed the Student and stated that he was “disappointed to hear that the Student was discontent” and offered to meet with her on March X, 2019. After the meeting, the Compliance Director emailed a summary of the meeting to the Student; it included that she had stated that the way she was being treated was “discriminatory.”

Denial of Extended Deadline Accommodation During Spring 2019

The Student told OCR that she was denied her extended deadline accommodation in her SWOK XXX and SWOK XXX classes during Spring 2019. The University told OCR that the Student’s professors routinely granted her requests for extensions during Spring 2019. With regard to SWOK XXX, the University provided OCR with copies of three of the Student’s emails to her professor in March and April 2019 requesting additional time to complete assignments. The University also provided OCR with copies of the professor’s email responses granting the extensions.

The Student told OCR that her MSW program included online class “discussion board” assignments, of which there were two kinds: 1) initial online posts in response to an instructor’s prompt; and 2) reaction posts in response to other students’ initial posts. The Student told OCR that the MSW Professor denied her requests for extensions to submit and respond to discussion board posts in SWOK XXX. The MSW Professor told OCR that the Student had received all the extensions she had asked for. The University provided OCR with copies of six of the Student’s emails to the MSW Professor requesting extensions to complete assignments during March, April, and May 2019; the University also provided OCR with copies of three emails from the MSW Professor granting the Student’s requests. The University did not provide OCR with information about whether the MSW Professor responded to the Student’s three other requests for extensions, as well as did not specify whether the requested extensions were for discussion board posts/responses or other assignments.

On March XX, 2019, the Student emailed the MSW Professor and asked a question about an assignment grade she had received, as well as asked for the opportunity to correct and resubmit the assignment for a higher grade. The Student stated that her requests should be granted because it was “within the timeframe of her [accommodation of] extended time.” The MSW Professor told OCR that in response, she called the Student and informed her that she would not grant her request for an extension to resubmit the revised assignment, but that she would meet with the Student to discuss her comments on the Student’s original assignment as well as provide additional feedback. The MSW Professor told OCR that she did not grant the Student’s request because it was for a discussion board assignment. According to the MSW Professor, discussion board posts and reactions are the same as in-class participation in an online class, and as such they need to take place during the same week as the assignment. The MSW Professor further stated that there was a policy in the MSW Program Student Handbook pertaining to discussion board posts and responses. OCR found the following policy regarding late discussion board assignments in the MSW Program Student Handbook, which was provided to OCR by the University:

Late Discussion Board Posts and Responses

Initial discussion board posts will be accepted up to seven days late with 5% per day deducted for each day the post is late. After seven days, no initial posts will be accepted for grading.

Due to the interactive nature of the MSW Programs online course room environment, additional time cannot be extended to required posts or comments to other student’s discussion question responses. It is important that students engage in the course room discussion boards with their peers during each weekly unit. Once the week has ended, responses to peers will not be accepted for grading.

On April XX, 2019, the Student emailed the MSW Professor again and requested additional time to make a discussion board reaction post. On April XX, 2019, the MSW Professor responded

stating that she would not grant extensions for reaction posts because, “not responding to peers, within the same week as the discussion is occurring, is the same as missing class in a traditional university. Once the week is closed, no more discussion occurs, and the class has moved on to the next unit.”

The OAE Director told OCR that he was also the University’s Section 504 coordinator; that he was aware of the MSW Program’s policy regarding discussion board posts and felt that it was “too rigid”; and that he had met with the Dean of Arts and Sciences and the Associate Dean of the Social Work Program and informed them that the policy raised a [Section 504] compliance issue. The OAE Director also told OCR that the Student had informed him several times that she was not given her accommodation of an extension of time to complete assignments; that he and the OAE Specialist had spoken with MSW program faculty on the Student’s behalf and advocated for her to receive extensions; and that he had also told “management” and the Associate Vice Chancellor for Enrollment that the extension policy as it pertained to discussion board posts was a [Section 504] compliance concern.

March XX, 2019 Meeting with MSW Professor and Student

On March XX, 2019, the Student, the Student’s “Reader”, and the MSW Professor had a video conference meeting (March XX meeting) to discuss the Student’s assignment grade and her request to revise and resubmit it. The Student told OCR that she explained to the MSW Professor that mistakes in her assignment were caused by her assistive technology, as well as that the grading criteria that had been used was inconsistent with the instructions the professor had posted online. According to the Student, the MSW Professor dismissed the Student’s concerns and stated, “that is not my department” in response to the Student’s complaint about her accessibility issues, as well as used other language that the Student felt was insensitive with regard to her disability.

The MSW Professor told OCR that the Student became upset during the March XX meeting “when she was told that she couldn’t use her accommodation to get extra points.” According to the MSW Professor, prior to Spring 2019, she and the Student had always had a respectful relationship, and she had not heard from others that the Student had been unprofessional. However, the MSW Professor stated that the Student was always complaining to her and other professors about the University’s “disability program”, and that she was not receiving accommodations and modifications that she needed. The MSW Professor further stated that she and the Student disagreed about the grading on the Student’s assignment, and that during the March XX meeting, the Student used “extreme” and “derogatory” language. The MSW Professor stated that the Student’s Reader also behaved unprofessionally during the March XX meeting.

On March XX, 2019, the OAE Specialist emailed the OAE Director stating that he had spoken with the Student after the meeting and that she was upset and had complained about accessibility

issues, about the MSW Professor's grading, and that she felt that she had been discriminated against by the MSW Professor.

On March XX, 2019, the OAE Director and OAE Specialist contacted the Student to discuss what had happened during the March XX meeting. The OAE Director told OCR that during that call, the Student stated that she had been discriminated against, and he asked her to provide a written summary of what had happened. According to the OAE Director, he also told the Student that he would be notifying the Compliance Director, and emails provided by the University confirmed that he did so. Following their phone conversation, the Student emailed the OAE Director and OAE Specialist and complained that the MSW Professor had denied her an extension of time to resubmit her assignment. Later in the day, the Compliance Director called and spoke with the Student. According to the Compliance Director, at the time, he was looking into what had happened during the meeting but was not conducting a formal investigation because the Student had not filed a formal complaint. The OAE Director and OAE Specialist also called the MSW Professor on March XX and spoke with her as well. After the call, the OAE Director emailed the MSW Professor and asked her to write a summary of what had happened during the March XX meeting.

On March XX, 2019, the Compliance Director and OAE Director spoke with the MSW Professor about the March XX meeting. The Compliance Director told OCR that she seemed surprised to hear from him, that he informed her that the Student was alleging that MSW Professor had discriminated against the Student on the basis of her disability, and that the MSW Professor was surprised that the Student felt that way because things had been going well with the Student prior to the meeting.

Also, on March XX, the Student emailed the OAE Director and OAE Specialist and complained that she was being discriminated against by the MSW Professor who, according to the Student, had stated that she would not grant an extension and that the Student would receive only 70% of the possible points for a discussion board post that the Student had not yet submitted. The OAE Director forwarded the Student's email to the Executive Vice Chancellor for Student Enrollment.

On March XX, 2019 and in response to his request, the Student's Reader emailed the OAE Director a summary of her perspective of what took place during the March XX meeting. According to the Reader summary, the MSW Professor had informed the Student that she could not revise and resubmit her assignment.

On March XX, 2019, the MSW Professor emailed the OAE Director, the OAE Specialist, and the Compliance Director her summary of what took place during the March XX meeting. According to the MSW Professor, during the meeting, the Student had used language that, in the social work profession, would not be considered professional or appropriate, and that Reader had also behaved

inappropriately; and that, in contrast, the MSW Professor stated that she had been “patient, culturally competent, professional, over-extending, sensitive and approachable” during the meeting. The email further stated that the MSW Professor was referring the Student for a “Step 1 Professional Disposition meeting” with herself as part of the student conduct process in the MSW program; and that she was completing a “Professional Disposition Inventory” (PDI) to address the Student’s “lack of professional conduct towards her [the MSW Professor][.]” The MSW Professor concluded the email by stating that, “if [the Student] does not acknowledge her behaviors associated with the professional disposition, I will refer her to a Step 2 Professional Disposition meeting with the MSW Program Director.”

The MSW Professor told OCR that she felt very strongly that the Student’s behavior during the March XX meeting was unprofessional, including that the Student had used derogatory language and specifically “did not have the willingness to accept that she couldn’t use her accommodation to resubmit her assignment to get more points.” The MSW Professor told OCR that she discussed the Student’s behavior with her supervisor, who was the MSW Program Director, and that the MSW Program Director decided that a “Step 1” meeting should be held with the Student. The MSW Program Director told OCR that she did not decide that the Step 1 meeting would be held, but that she suggested it based upon the MSW Professor’s description of the Student’s behaviors.

On March XX, 2019, the OAE Director emailed the Dean of Arts and Sciences and requested his guidance because “the case was escalating” and that the Student was stating that she was being “discriminated against.”

Scheduling the Conduct Meeting with the Student

The University’s “MSW Professional Conduct Policy” can be found on the University’s website.⁵ Relevant portions included the following:

Step 1: When a MSW program faculty member observes or becomes aware of behavior that brings into question a student’s ability to maintain the NASW Code of Ethics, the faculty member shall meet with the student (in person, by phone, or by electronic means) to discuss the behavior and to advise as to appropriate means of remediating such behavioral concerns. The faculty member will document the behavior and the advisement provided, and will submit the documentation to the MSW program director.

Step 2: When the MSW program director and field director deem that, after one or more occurrences of such faculty advisement, a student’s ability to maintain the NASW Code of Ethics remains in question and behavioral concerns remain unresolved, a Professional Conduct Meeting shall be convened.

⁵ <https://catalog.brandman.edu/arts-sciences/socialwork-ma/#programrequirements>

Step 3. At any time after the Professional Conduct Meeting, if the MSW program director and field director deem that the student's ability to maintain appropriate professional, ethical, and/or personal standards remains in question and the behavioral concerns remain unresolved, they may recommend to the Dean that the student be suspended or dismissed from the MSW program. The Dean may suspend or dismiss the student from the program, with written notice provided to the student.

The Dean of Arts and Sciences and the Compliance Director both told OCR that the purpose of a Step 1 meeting in the MSW program is to be instructive – for example, to inform a student that a concern has been identified – and not disciplinary.

According to emails provided by the University, on March XX, 2019, the MSW Professor, the MSW Program Director, and the Social Work Program Specialist met and determined that a “formal Step 1 conduct meeting” (Step 1 meeting) would be held with the Student on April X, 2019 (April 1 meeting). The MSW Program Director emailed the Student on March XX, 2019 and stated that “MSW Program faculty have become aware of behavior that brings into question your ability to maintain appropriate professional, ethical, and/or personal standards, and by policy they have a responsibility to meet with you and advise you as to appropriate means of remediating such behavioral concerns. Therefore, a Professional Conduct Meeting has been scheduled with [the MSW Professor] on XXXXXX April X, 2019.” While University witnesses stated that they were convening a Step 1 meeting with the Student, the language used in the March XX, 2019 email to the Student described the meeting as a “Professional Conduct Meeting” which, according to the University policy, is a Step 2 meeting.

The Student told OCR that she believed the Step 1 meeting was scheduled in retaliation for her complaint to the OAE Director that the MSW Professor had discriminated against her during the March XX meeting, as well as for her previous complaints to the Compliance Director, OAE staff, and other administrators that the University was discriminating against her by not providing her with her approved accommodations and remedying her accessibility issues.

On March XX, the Associate Dean of the Social Work Program emailed the MSW Program Director and MSW Professor and stated the following: Due to the possibility that [the Student] may be filing a discrimination complaint, we have been asked – for the protection of the involved faculty – to withhold the submission of the PDI on the student for now and if the student does file a complaint prior to the scheduled meeting on April X, the meeting may be postponed.”

The Student told OCR that on March XX, 2019, she received an email with an unsigned letter on University letterhead informing her without explanation that the “Step 1 Professional Conduct Meeting” with the MSW Professor had been cancelled.

The Compliance Director told OCR that the decision to cancel the Step 1 meeting was made following a meeting that included him, the Dean of Arts and Sciences, the OAE Director, the Associate Vice Chancellor of Human Resources, and possibly the Associate Dean of the Social Work Program on the phone. The Compliance Director could not recall when, specifically, this meeting took place other than that it was prior to the Step 1 meeting's scheduled date of April X, and that during the meeting, he shared the following three concerns: 1) that even though a Step 1 meeting is not intended to be disciplinary in the MSW program, the Student would interpret it that way; 2) that if the Student filed a formal complaint, the Step 1 meeting would have to be halted anyway; and 3) that the MSW Professor had not documented any previous instances of concerns about the Student's behavior. The Compliance Director told OCR that after discussing these concerns and other issues, they collectively decided to not hold a formal Step 1 conduct meeting, and to instead have an informal meeting with a neutral party in the program and discuss the Student's concerns.

On April X, 2019, the Compliance Director, the Student, and the OAE Director had a phone meeting, in which the Student stated that she was being discriminated against by the MSW Professor. After the call, the Compliance Director emailed that Student information about how to make a formal complaint, including a screenshot of the weblink to the University's grievance process, which the Student told OCR that she was unable to read because it was inaccessible to her assistive technology. The Compliance Director's email also noted that he had discussed the University's retaliation policy with the Student during their call. The Student told OCR that she chose not to make a formal complaint at that time because she did not feel that it would be addressed, based upon the University's prior non-responsiveness to her complaints.

On April X, the MSW Professor emailed a draft of the PDI she was preparing for the Student to the MSW Program Director. The MSW Program Director edited the PDI to remove sentences in which the MSW Professor stated that the Student had complained about the challenges she faced as a student with a disability, the problems with her assistive technology, and the MSW Professor's refusal to permit the Student to use her extended deadline accommodation to resubmit her assignment. In her April X, 2019 email to the MSW Professor, the MSW Program Director stated that she had revised the PDI to "focus on the student's behavior."

Attached to the PDI were 12 exhibits. Ten were copies of emails from the Student to the MSW Professor; one was a copy of the assignment rubric; and one was another assignment on which the MSW Professor had provided feedback. Only one email related to the March XX, 2019 meeting. For example, the PDI stated that Exhibits 1-5 were examples that the Student did not "appropriately deal with disappointment related to the educational experience." The exhibits included emails from the Student asking questions about topics that had been discussed in class or in the course readings. When OCR asked the MSW Professor how they supported the PDI's assertion that the Student did not handle disappointment appropriately, the MSW Professor

responded that they were examples of the Student “not being focused on the assignment, and instead being focused on trying to get more points.”

Informal Meeting

On April X, 2019, the MSW Program Director emailed the Student a copy of the PDI, reminded the Student that the formal Step 1 meeting had been cancelled, and stated that an informal meeting had been scheduled with the MSW Program Director “to discuss the concerns that [the Student] and the MSW Professor have had this Spring.”

On April XX, 2019, the informal meeting took place via video conferencing and was attended by the Student, her Reader, the MSW Program Director, and the Social Work Program Specialist (Program Specialist) who was present as a notetaker. According to the Program Specialist’s notes, the MSW Program Director reviewed the PDI with the Student during the meeting. The Student and the Reader refuted the PDI with regard to how it described their conduct in the March XX meeting. The Student’s concerns regarding disability accommodations were not discussed during the meeting. The following day, on April XX, 2019, the MSW Program Director emailed the Student and stated that based on their discussion during the meeting the previous day, a formal conduct meeting would not be scheduled. She attached a copy of the Program Specialist’s meeting notes and a list of recommendations for the Student to “improve her communication.” The MSW Program Director told OCR that she also prepared an additional set of notes about the meeting that were kept in the Student’s file, “as an internal record.” OCR reviewed the notes, which included a section entitled “Previous Reports of Similar Behavior from this Student – Fall 2018.” The MSW Program Director told OCR that she did not discuss this section with the Student, and it did not appear in the Program Assistant’s notes from the meeting.

The Student’s Requests for Modified Assignments During Spring 2019

The Student told OCR that in mid-April 2019, her SWOK XXX professor assigned to the class homework of viewing social media websites and searching for pictures, posts, and comments reflecting microaggressions that were directed at a specific population. The Student told OCR that the assignment was inaccessible because her assistive technology did not recognize or describe pictures and images. The Student stated that when she contacted the professor and asked for an alternate assignment, the professor responded that she should ask her groupmates for assistance. The Student told OCR that she did so, and that she completed the assignment in this manner, but that she was not provided with the same learning experience as other students who could view the material. On April XX, 2019, the Student emailed the OAE Specialist and OAE Director describing the assignment and its challenges and including the professor’s suggestion that she ask her groupmates for assistance.

The Student told OCR that in late April 2019, her SWOK XXX professor assigned students to watch a movie and develop an intervention plan for a character in the movie. The Student told OCR that she could not obtain a DVD copy of the movie that contained descriptive audio. The Student complained to the OAE Director about the assignment. On April XX, 2019, the OAE Director emailed the SWOK XXX professor asking for an alternate assignment if the Student did not have full accessibility to the video. The SWOK XXX professor responded that she had verbally provided the Student with the necessary descriptive background information for the character's actions. The Student told OCR that, while this was true, she did not have the same experience as other students because she was relying on someone else's interpretations of visual content and not on her own observations.

The Student told OCR that the University continued to fail to modify visual assignments to make them accessible to her during the 2019-2020 academic year, including in her SWOK XXX class, where students were asked to watch a movie which did not have descriptive captions. The Student stated that she asked for an alternate assignment; the professor instead provided her with a transcript of the movie but, according to the Student, the transcript was computer-generated and portions of it did not make sense.

Revised MSW Program Policy Regarding Extensions for Late Discussion Board Posts

On June X, 2019, the Student emailed her SWOK XXX professor and asked for an extension of time to turn in an assignment as well as to respond to a classmate's discussion post. The professor responded later that day that the Student had up to seven days to turn in the assignment but, with respect to the Student's request for extra time to respond to the discussion board post, that students were expected to contribute to the group dynamic process and "late discussion board posts defeat this purpose." The professor stated that accordingly, she would not grade any student's late discussion board post. Later the same day, the professor emailed a clarification to the Student indicating that her previous email was only to explain the rationale for discussion board posts, and that the Student could respond to discussion board posts late without her grade being affected. The OAE Director told OCR that he had spoken with the professor during the interim and provided her with information and feedback about the Student's extension accommodation, and that as a result, the professor changed her mind.

The Dean of Arts and Sciences told OCR that the MSW Program revised its late assignment policy prior to the start of the 2019-2020 academic year. According to the Dean of Arts and Sciences, MSW Program faculty felt strongly that discussion boards functioned as classroom discussion, and that allowing students, even those with extension accommodations, to respond late "defeated the purpose, pedagogically." The Dean of Arts and Sciences told OCR that MSW program faculty informed him that they had researched the issue with respect to the social work profession and had cited professional standards in support of their position. They asked him for guidance in balancing their professional obligation with the University's obligation to comply with Section 504. The

Dean of Arts and Sciences stated that he consulted with the OAE Director, the Compliance Director, the chair of the undergraduate Social Work Department, and the MSW Program Director, and developed a new policy which went into effect at the beginning of the Fall 2019 Session I. The new policy was posted online and shared with all faculty and provided for the following:

1. All assignments other than discussion boards:

- Students without extension accommodation: Work accepted up to seven days beyond the assignment's deadline, with five points deducted for each day the assignment is late. Instructor's discretion whether to accept work more than seven days late.
- Students with extension accommodation: Late work accepted without penalty for up to seven days beyond the assignment's deadline. If student requests an extension of more than seven days, consult with Office of Accessible Education and BASW/MSW Program Director for guidance.

2. Discussion board posts (student's initial post):

- Students without extension accommodation: Work accepted up to seven days beyond the initial post's deadline, with five percent deducted for each day the initial post is late.
- Students with extension accommodation: Late work accepted without penalty for up to seven days beyond the initial post's deadline. If student requests an extension of more than seven days, consult with Office of Accessible Education and BASW/MSW Program Director for guidance.

3. Discussion Board (student's response to another post):

- Students without extension accommodation: No late work accepted. In cases of student emergency, instructor's discretion whether to waive the applicable response posts (i.e., score them at zero out of zero), so that the student is neither penalized nor credited.
- Students with extension accommodation: No late work accepted. In cases of student emergency, consult with Office of Accessible Education for guidance. If the Office confirms that the emergency is related to the student's accommodations, waive the applicable response posts (i.e., score them at zero out of zero), so that the student is not penalized.

Issue 1: Whether the University failed to provide the Student with her approved accommodations and services and to make modifications to academic requirements that were necessary to ensure that such requirements do not discriminate or have the effect of discriminating against her on the basis of disability.

Legal Standard

Auxiliary Aids

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(d)(1), require recipient colleges and universities to take steps to ensure that no disabled student 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. Section 104.44(d)(2) provides that auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. However, pursuant to the regulations, at 34 C.F.R. § 104.44(d)(2), colleges and universities are not required to provide disabled individuals with personal devices, individually prescribed devices, readers for personal use or study, or services of a personal nature.

Academic Adjustments

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.

Analysis & Resolution

The Student stated that since Spring 2019, the University did not provide her with her approved accommodations of double time on quizzes and tests, e-books, and an extension to submit late discussion board assignment. The Student also stated that her SWOK XXX professor did not provide her with a modification of an alternate assignment when the initial assignments were not accessible to her because of her visual disability.

With respect to the Student's double-time and e-book accommodations, and with respect to failing to provide alternate assignments as a modification in the Student's SWOK XXX class, OCR determined based upon a preponderance of evidence that there was insufficient evidence to find that the University was not in compliance with 34 C.F.R. § 104.44(a). With respect to the Student's extension accommodation, however, OCR determined based upon a preponderance of evidence that the University violated 34 C.F.R. § 104.44(a). The reasons for these determinations are as follows:

Double-time on quizzes and tests: The Student told OCR that she did not receive this accommodation; however, the evidence did not substantiate this allegation. The Student's February 2019 emails to her SWOK XXX professor, and her March 2019 emails to her SWOK XXX professor, showed that the Student received this accommodation, but that she had to ask her professors (sometimes more than once) to implement it. The evidence also showed that, while the Student was upset that she did not receive the accommodation until she asked for it, the delay implementing it was not lengthy (no more than two days in both cases) and did not negatively impact the Student's grades.

E-book accommodation: Similarly, OCR found insufficient evidence to support the Student's allegation that she did not receive this accommodation during in SWOK XXX and SWOK XXX. With regard to SWOK XXX, there was no evidence apart from the Student's testimony that she was not provided with her required e-book; the University told OCR that it was never the case that the Student had not received her e-book, or another available medium for the text. With regard to SWOK XXX, while there was a delay in the Student receiving the e-book due to compatibility issues with different versions of the software platform, the Student was provided with an alternate version of the text while the issue was being remedied.

Modifications: The Student told OCR that during Spring 2019, her SWOK XXX professor required students to complete assignments that were inaccessible to her as a student with a visual impairment. Specifically, the Student stated that the assignments were viewing social media websites to spot targeted microaggressions and viewing a movie to develop an intervention plan for a character based upon their actions including visual expressions. The Student stated that she asked for different assignments as a modification, and that the professor did not provide different assignments. Instead, according to the Student, the professor told the Student to ask her groupmates for assistance describing the websites; as well as told the Student relevant background

information about the movie character's expressions and motivations. The Student told OCR that she successfully completed the assignments but was discriminated against because she did not have the same learning experience as her classmates.

OCR determined that the professor's modifications did not discriminate against the Student in violation of 34 C.F.R. § 104.44(a). Here, the professor adapted the manner in which SWOK XXX was conducted by providing the Student with verbal information about the visual content of websites and a movie. The Student did not allege, nor was any other evidence provided, that the objectives of the assignments (to identify targeted microaggressions; to develop an intervention plan) were affected by the delivery of verbal rather than visual background information about the assignments. The fact that the Student had a different learning experience than her classmates is not sufficient to substantiate the allegation, where the experience was not lesser than her classmates.

Extension of time to submit assignments: OCR determined by a preponderance of evidence that, since Spring 2019, the University failed to provide the Student with her accommodation of an extension of time to submit late discussion board posts. The evidence included that the Student was a qualified individual with a disability (visual impairment), and the Student's March XX, 2019 faculty notification letter included an extension of time to complete assignments as an approved accommodation. There was also incontrovertible evidence that the Student was not provided with this accommodation: the MSW Professor told OCR that she did not accept late discussion board posts from the Student in SWOK XXX; the MSW Program Director told OCR that during Spring 2019, the MSW Program penalized late discussion board posts and refused to grant extensions longer than seven days, even if a student had an extension as an approved accommodation; and the 2018-2019 MSW Program Student Handbook included a "Late Discussion Board Posts and Responses" policy that stated that "after seven days, no initial posts will be accepted for grading."

The MSW Professor and MSW Program Director told OCR that the reason for denying the Student this accommodation was the significance of the discussion board posts in online courses. According to the MSW Professor and MSW Program Director, in the online MSW program, the discussion board functioned as a virtual classroom and student posts and responses were dialogic and needed to be completed during the same week as the assignment. Moreover, the MSW Professor and the SWOK XXX professor both stated that extensions permitting late discussion board posts "defeated the purpose" of discussion boards.

In reviewing an institution's determination that a specific requirement is essential to the program and cannot be modified for a student with a disability, OCR considers whether decision-makers considered alternatives for the essential requirements and whether the requirement in question could be modified for a specific student with a disability. The Dean of Arts and Sciences told OCR that MSW faculty believed that classroom discussion was essential to student learning;

however, the MSW program was entirely online and permitted discussion board posts and responses to be made up to six days apart. The University did not provide evidence that extending the time frame to respond to discussion board posts beyond six days would fundamentally alter the program. Nor did the University show that it had explored other ways to modify this requirement. Because the University failed to establish that the time limitation was essential or that the requirement could not be modified for the Student, OCR found the University in violation of Section 504 with respect to its failure to provide the approved academic adjustment at issue.

The Dean of Arts and Sciences provided OCR with a copy of the MSW Program's revised policy with regard to late assignments. OCR is concerned that the revised policy also may not comply with 34 C.F.R. § 104.44(a). With respect to, 1) assignments other than discussion boards, and 2) a student's initial discussion board post, the revised policy permits a student with an approved extension accommodation to submit late work for up to seven days, after which time the student must consult with OAE and the MSW Program Director. However, it is not clear from this language whether, in situations in which a student's disability-related accommodations needs require more than seven days extensions, whether extensions in excess of seven days are permitted and if so, under what circumstances and subject to whose approval and based upon what evidence. With respect to, 3) a student's discussion board response, the revised policy does not permit a student with an extension accommodation to earn any credit for a late assignment, stating only the student will not be penalized for their late work if it is determined that a student's need for an accommodation is due to an emergency related to the student's accommodation. This raises a concern that a student with an approved accommodation of an extension of time may be forced to choose between using their accommodation or receiving credit for an assignment.

OCR also identified a compliance concern that the University failed to appropriately address the Student's complaints that she was not provided with accommodations, services, and modifications, and that the MSW Professor discriminated against her. The Compliance Director's explanation of when complaints involving students with disabilities would be referred to OAE or would instead trigger the University's discrimination grievance process was unclear and reflected a need for clear policy and guidelines for how to effectively and efficiently address student complaints regarding a failure to implement their approved accommodations, failure to provide equal access, or other allegations of disability-related discrimination. The current OAE Policy Statement does not provide this clarification: it requires the OAE Director to attempt to informally resolve any complaint or appeal brought by a student with a disability and involving OAE-provided accommodations and services; if the OAE Director cannot resolve the matter, the student can file a formal complaint using the University's grievance procedures, and the OAE Director will investigate "informally but thoroughly", including permitting the student to submit supporting evidence. In this case, the Student complained of discrimination to the Compliance Director six times – on November X, 2018; November XX, 2018; January XX, 2019; March X, 2019; March X, 2019; and March XX, 2019 – before the Compliance Director provided her with information on

April X, 2019 about how to make a formal complaint pursuant to the University's grievance procedures. The Student told OCR that the information about the complaint process that the Compliance Director provided was inaccessible to her assistive technology because it was a screenshot; she also stated that she chose not to make a formal complaint at that time because she did not feel that it would be addressed, based upon the University's prior non-responsiveness to her complaints. The Student also complained numerous times to the OAE Director that her accommodations were not being implemented.

Issue 2: Whether the University retaliated against the Student for complaining that she was not provided with accommodations, services, and modifications.

Legal Standard

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference 34 C.F.R. § 100.7(e) of the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., which provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation.

Analysis & Resolution

OCR was concerned that the Student may have been subjected to retaliation. The evidence showed that the Student engaged in a protected activity on several occasions when she informed University personnel that she believed she was discriminated against based on her disability and when she advocated for herself to receive accommodations. Also, specifically with regard to her interaction with the MSW Professor, the Student engaged in protected activity when she informed the OAE Specialist on March XX, 2019, and the OAE Director and Compliance Director on March XX, 2019, that the MSW Professor had discriminated against her on the basis of her disability during their March XX meeting.

Within six days of her complaints of disability-based discrimination regarding the March XX meeting with the MSW Professor, on March XX, 2019, the Student was notified by the MSW

Program Director that she was being subjected to a Professional Conduct Meeting with the MSW Professor on April X, 2019. A Professional Conduct Meeting is described in the University's policy as a "Step 2" meeting that could result in suspension or dismissal. However, in this case, the University stated that the Professional Conduct Meeting was intended to be only "Step 1." Shortly after scheduling the meeting with the Student and the MSW Professor, the University decided to cancel the meeting because the Student was raising concerns regarding discrimination, and instead scheduled an informal meeting with the Student and the MSW Program Director as a neutral party.

OCR's compliance concern was based on the following evidence. The initial conduct meeting was scheduled with the Student only after the MSW Professor was informed that the Student had complained that she had been discriminated against by the MSW Professor. Although the MSW Program Director indicated that there were concerns about the Student dating back to the fall of 2018, these concerns were not documented at the time, nor did they instigate a conduct meeting. Such a meeting did not occur until after the MSW professor learned of the Student's allegation, when she scheduled a Professional Conduct Meeting between herself and the Student. Under the University's policy, the meeting was part of a process that could result in the Student's suspension or dismissal from the program. Even though the nature of the meeting was changed to an "informal" meeting, as the MSW Program Director's April XX email to the Student indicated, the decision to not have a formal conduct meeting with the Student was only confirmed after she had participated in the informal meeting. Further, although the stated purpose of the informal meeting was to discuss both the MSW Professor's and Student's concerns from Spring 2019, there was no evidence that the Student's concerns were discussed, including no evidence that her underlying allegations of discriminatory treatment, were ever investigated by the University. In contrast, there was evidence that the Student's concerns had been removed from the final draft of the PDI by the MSW Program Director, as well as that the MSW Program Director's notes of the meeting included information about the Student's alleged previous unprofessional behavior that had not been discussed with the Student at the informal meeting. For these reasons, OCR identified a compliance concern that the Student may have been subjected to retaliation when a meeting was held that could have resulted in discipline and as such may have constituted an adverse action.

Prior to determining whether the University's actions of convening a meeting with the Student constituted retaliation, on February 5, 2020, the University expressed interest in voluntary resolution pursuant to Section 302 of OCR's Case Processing Manual, and OCR determined that it was appropriate to resolve the compliance concerns.

To address the violation and compliance concerns OCR identified, on August 25, 2020, the University entered into the enclosed resolution agreement (Agreement). Under the Agreement, the University has agreed to revise its MSW Program policy for late assignments; include in a training, and issue a guidance memo containing information about, Section 504's prohibition against

retaliation; and post information on its website and in its Academic Course Catalog describing the process for filing and resolving a complaint of disability-based discrimination and the prohibition against retaliation. Pursuant to the Agreement, the University will also meet with the Student and review her approved accommodation of an extension of time to submit an assignment for each of her current and remaining classes and, if necessary, update the length of the extension accommodation as appropriate.

Overall Conclusion

Based on the commitments made in the Agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the Student and University concurrently. When fully implemented, the Agreement is intended to address the complaint allegations. OCR's determination in this matter 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. OCR will monitor the implementation of the Agreement until the University is in compliance with the terms of the Agreement. Upon completion of the obligations under the Agreement, OCR will close the case.

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 has a right to appeal OCR's finding that the University did not violate Section 504 with respect to providing double time on quizzes and tests, e-books, and modifying assignments that were inaccessible due to her visual impairment within 60 calendar days of the date indicated on this letter. In the appeal, the Student must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the University. The University has the option to submit to OCR a response to the appeal. The University must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the University.

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

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will

seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Matthew Wood, Civil Rights Attorney, at Matthew.Wood@ED.GOV.

Sincerely,

/s/

Joseph Wheeler
Team Leader

cc: Fred Plevin, Paul, Plevin, Sullivan & Connaughton LLP