



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

May 13, 2021

By email only to: chancellor@brandman.edu

Gary Brahm
Chancellor
Brandman University
Office of the Chancellor
16355 Laguna Canyon Road
Irvine, CA 92618

Re: OCR Docket No. 09-20-2304
Brandman University, California

Dear Chancellor Brahm:

This letter is to advise you of the resolution of the complaint investigation that the U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated at Brandman University (University). OCR investigated whether the University has discriminated against students on the basis of disability, because the online platforms used for accessing class materials and for reviewing transcripts and financial aid information are not accessible to persons with visual impairments.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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.

To investigate this complaint, OCR reviewed documents provided by the University, and interviewed University staff members and a student with vision impairments whose concerns about accessing the University's online platforms prompted this complaint to be filed (the Student). Below is a summary of the facts and OCR's resolution of this matter.

Findings of Fact

The University provided information about the learning management system (LMS) and other internal student systems, such as for financial aid and academic information. The vast majority of the students at the University use the Blackboard Learn ("Blackboard") system. As part of its data response, the University identified and provided the applicable Voluntary Product Accessibility Template (VPAT) for the Blackboard LMS, which is an accessibility conformance report based on an accessibility audit conducted by a third party on a representative sample of pages to assess compliance with the Web Content Accessibility Guidelines (WCAG) 2.1. OCR

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

reviewed the VPAT and noted several areas where functionality was limited for users without vision or with limited vision. The VPAT for other platforms did not indicate any specific limitations for users with visual impairments.

When OCR spoke to the Student, who uses these systems, she reported that she encountered barriers with the LMS because instructors were loading documents in a format inaccessible to her screen reader. The Student clarified that course content was rendered as PDF documents which were incompatible with her assistive technology, but did not state exactly how they were incompatible.¹ She reported that she provided notice to the University of the barriers she encountered in Spring semester, 2020, but that staff were unresponsive to the concerns she raised.

OCR interviewed staff members in the Office of Accessible Education (OAE), and a course developer, who confirmed that University staff met with the Student in June of 2020 and September of 2020 to discuss the Student's technology needs in general.² The course developer said that during the June meeting, the Student never raised specific concerns about incompatibility of her assistive technology with the Blackboard LMS or with opening PDF documents on the platform in general. Further, notes from the September meeting provided by the University do not indicate discussion of incompatibility issues. The University stated to OCR that it attempted to mitigate any barriers the Student experienced by providing her a reader as an accommodation. OCR reviewed a copy of her approved accommodations and confirmed that she was provided reading support. According to the OAE Director, the Student initially was provided 30 hours a week of reader support but that it was reduced to 20 hours a week in the current academic year, based on previous usage amounts.

The notes from the September meeting indicate that the Student raised a different type of barrier when she described a concern regarding an assignment in a class she was currently taking, in which she was required to complete an assignment by viewing a video, but the video lacked audio descriptions. The Student raised the same issue with OCR and stated that the instructor failed to provide her an alternative assignment. However, in discussion with the University, OCR confirmed that the OAE Director wrote the Student an e-mail on October 6, 2020, indicating that she worked out an alternative assignment for this class. Further, the University confirmed that the OAE office worked with all course developers for fall 2020 and spring 2021 to make sure that for all the Student's classes, any assignments requiring videos had audio transcripts provided upon request of the Student and that alternative assignments were made available to the Student as necessary for video-based assignments. The Student did not provide OCR with additional examples of barriers specific to video assignments from fall 2020 or the current semester.

¹ OCR notes some PDF documents are accessible to screen reader users, while others are not; their degree of accessibility largely depends on whether the creator has followed appropriate accessibility protocols when creating the documents.

² The September meeting was mandated as part of the resolution of a separate OCR resolution involving the same student, under docket number 09-20-2004.

With respect to the student information systems, the Student reported that navigation was “limited,” but she did not provide more specific information.

OCR conducted its own assessment of the University’s LMS and other internal student systems. OCR applied both automated and manual testing protocols to identify technological barriers to access including checking for appropriate keyboard access and navigation, semantic markup, visual focus indicators, color contrast, video captioning, and document accessibility. When OCR identified a technological barrier to access, it then performed a secondary evaluation to determine whether the technological barrier implicated the University’s compliance with the law by impeding the ability of people with disabilities from having an equal opportunity to enjoy the University’s online programs, services, or activities. OCR identified possible compliance concerns including, but not limited to:

- The foreground and background colors of important content lacked sufficient contrast, posing a barrier to people with low vision.
- Users with disabilities who use computer keyboards for navigation due to a disability were unable to tell visually where they were on a page, as visual focus indicators were missing.
- Form fields were missing programmatic labels or titles, posing a barrier to people with vision disabilities who use screen readers.

Further, in evaluating the LMS, OCR identified several PDF documents loaded on the system that lacked sufficient structure for compatibility with assistive technology.

Legal Standards

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.

Analysis and Conclusions

In this case, OCR investigated whether users with visual impairments, such as the Student, encountered barriers while using the University’s LMS and other student information systems. One concern OCR explored during its investigation was whether the University failed to engage

the Student in a process to resolve those barriers, as she suggested. However, review of facts through interviews and documentation provided by the University, did not indicate that the University staff failed to meet with the Student, in order to provide her supports and accommodations, or respond to specific examples of barriers. OCR also conducted independent testing, and identified barriers for users who rely on keyboards or screen readers, in navigating the LMS and the student information systems. The University expressed interest in voluntarily resolving these issues with OCR.

On May 11, 2021, the University signed the enclosed resolution agreement (Agreement) to voluntarily resolve the directed investigation pursuant to Section 302 of OCR's *Case Processing Manual*. The 302 agreement obligates the University to remove barriers, and OCR will monitor the implementation of the Agreement.

OCR also provided the University with technical assistance specific to identifying barriers identified in PDF documents that were incompatible with assistive technology.

This concludes OCR's complaint investigation. 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 complaint investigation. 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. An individual 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 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. 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.

Please feel free to contact me with any questions you may have at 415-486-xxx or by email at xxx@ed.gov.

Sincerely,

/s/

xxx
Senior Investigator

cc: xxx, Counsel