



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV**

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**REGION XV
MICHIGAN
OHIO**

OCT 22 2013

Gwen M. Mattison, Esq.
General Counsel
Wright State University
356 University Hall
3640 Colonel Glenn Highway
Dayton, Ohio 45435

Re: OCR Docket #15-12-2118

Dear Ms. Mattison:

This is to notify you of the disposition of the above-referenced complaint that was filed with the U.S. Department of Education's Office for Civil Rights (OCR) against Wright State University (the University) on September 11, 2012, alleging the University discriminated against a student with a disability (the Student). Specifically, the complaint alleged that the University:

1. failed to timely provide the Student with accessible-format written materials for her courses from March 15, 2012, through the date the complaint was filed with OCR;
2. failed to provide the Student with necessary academic adjustments for her physical impairment in a Lithography course for the fall 2012 semester, and eventually offered her a course substitution to Advanced Drawing, a course for which the University was not providing the Student with necessary academic adjustments for her vision disability;
3. did not provide the Student with the same access to assessments that was afforded to her classmates in the xxxxxxxx online math course that she was enrolled in for fall 2012, and did not provide the Student with accessible software for this course; and

4. on xxxxxxxxxxxx, 2012, in retaliation for the Student's having advocated on her own behalf regarding her attempts to receive disability accommodations, threatened to bring code-of-conduct charges against the Student.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. Section 504 and Title II also prohibit retaliation against individuals who seek to pursue rights protected by these statutes. As a recipient of Federal financial assistance from the Department and as a public entity, the University is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR investigated the following legal issues:

- whether the University failed to make such modifications to its academic requirements as were necessary to ensure that such requirements did not discriminate or have the effect of discriminating against a qualified student with a disability on the basis of disability in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44;
- whether the University made reasonable modifications in policies, practices, or procedures when the modifications were necessary to avoid discrimination on the basis of disability in violation of the Title II implementing regulation at 28 C.F.R. § 35.130(b)(7);
- whether the University failed to take appropriate steps to ensure that communications with a participant are as effective as communications with others, in violation of 28 C.F.R. § 35.160; and
- whether the University intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured under Section 504 or Title II, or because the individual complained or participated in any manner in a proceeding or hearing under Section 504 or Title II, in violation of 34 C.F.R. § 104.61 and 28 C.F.R. § 35.134.

OCR interviewed the Student and reviewed documentation provided by the Student and the University. OCR also interviewed relevant University witnesses. In addition, OCR provided the Student with the opportunity to respond to information submitted by the University and to provide additional support for the complaint allegations. OCR also

member will take the student to the ODS testing center at the end of the interview to sign the student up for that service. The ODS administrators stated that typically ODS does not provide a student with anything in writing stating what academic adjustments have been approved or denied for the student. There is a database in which the ODS staff member is to enter what has been approved for the student; this information is then to be printed out for the student's file. The student does not have access to the database.

To use approved academic adjustments for a class, the student is required to talk to his or her instructors about the fact that the student is registered with ODS and about what academic adjustments the student is approved to use. If an instructor wants verification, then ODS sends an e-mail verifying what academic adjustments the student is approved for. The director and associate director told OCR that they did not typically put the academic adjustments in writing for students because they did not want the students to simply hand a copy to their instructors. They believed this method helped students become equipped to discuss their disabilities and to self-advocate, thereby "grooming them for the workplace." The director stated, however, that students could obtain a list of their approved academic adjustments upon request.

According to the associate director and director, if a student disagrees with the decision about the academic adjustments he or she is approved to receive, the student may go to the associate director of ODS to discuss. If still unsatisfied, or if the associate director was the original ODS decision-maker, then the student can discuss with the director. If the discussion with the director does not resolve the dispute, the student may appeal to the University's vice president for student affairs. The director added that the student would be able to appeal to the University's president as a final step. This appeal process is not set forth anywhere in writing. The director told OCR that ODS can inform a student of this process.

- **The Student's Requests for Disability Services**

The Student first identified herself as a student with a disability and began making requests for academic adjustments to ODS, as well as directly to faculty members, from the beginning of her enrollment at the University. The Student said that ODS gave her a form that her physician was to fill out regarding her disabilities. The Student stated that her doctor submitted the completed form, together with a letter, to ODS. The Student said she recalled talking to the then-ODS director during her initial interaction with ODS. The Student stated that the University accepted the documentation as evidence of her disability and approved her for disability services. She, however, has no written corroboration for this. She has been approved for disability services since then.

The University did not give the Student anything in writing specifying the academic adjustments that the University approved that she receive. She said that, instead, the University's director of disability services orally informed her of the approved academic adjustments. She stated that these included: taking tests at ODS' office so that the tests

could be read to her via software that had been loaded on a specific computer (because of her vision difficulties); having textbooks and other course reading material converted to an electronic format so that assistive technology programs loaded on her personal computer could read the text to her (also because of vision difficulties); and the use of a podium to place her papers on (because of her neck problems).

Upon request, the University provided OCR with the medical documentation that it had retained that had been submitted in support of the Student's initial application for disability services. This documentation included neither the original application for disability services nor the supporting documentation. Instead, the University's production included five different letters, each authored by the same physician. The letters do not appear to offer the doctor's own medical opinions or diagnoses, but instead primarily feature the doctor's recitation of health-related complaints and requests of the Student.

Additional University-provided documentation regarding the Student's disability and approved academic adjustments shows that the then-ODS director met with the Student on xxxxxxxxxxxx, 2009. The director's notes from that meeting indicate that the two discussed the Student's aversion to fumes and solvents and the University's inability to provide a substitution for art class materials to accommodate that aversion, although one of the Student's prior institutions had provided substitutions, because, at the University, acrylic paint was used in the same building as the migraine-causing oil and solvent paints. Another document provided by the University, titled "Pre-Service Interview Form," states that the ODS director had interviewed the Student. Whether this interview form refers to the same xxxxxxxxxxxx, 2009, meeting is unclear. Under the heading "Services," the Pre-Service Interview Form lists various academic adjustments that ODS apparently approved for the Student. These academic adjustments included, for academics, note copying and tutoring; for test proctoring, enlarged print, extended time, private room, reading software, and a PC for essay exams; and, regarding the ODS Technology Center, e-text and scanned books. A third document provided by the University, also undated, is titled "Anticipated Services." The University's associate director of disability services filled out this form. The following services, according to that form, were found to be applicable for the Student: extended time on exams/quizzes and can take breaks during exams as needed; use of technology – reading software – to complete exam/quizzes; an in-class note taker; if given instructor's permission, a recommendation to tape record classes; books in alternative format; enlarged print for class handouts; career development (paid and unpaid work experiences); use of University tutoring services; and use of the University writing center. Finally, the University provided a xxxxxxxxxxxx, 2010, letter from the University's assistant director of academic support, which states that the Student is eligible to receive academic adjustments, including: extended time to take exams/quizzes; use of screen reader for exams/quizzes; enlarged print for exams/quizzes; ability to take exams in an environment with reduced distractions; ability to use a computer for writing any essays for exams/quizzes; books in alternative format; assistance in obtaining copies of lecture notes; and tutoring support.

In support of her complaint, the Student provided OCR with additional documentation regarding her medical condition. These papers included both documents that may have been shared with the University and documents that were likely not shared with the University. The Student's papers show that the Student had visited the eye doctor's office on dozens of occasions, seeking treatment for an apparent vision problem.

Finally, it is undisputed that the University found the Student to be a person with a vision disability and approved her for certain academic adjustments related to that disability, including converted texts, although no University witness was able to state with certainty all of the specific academic adjustments approved for the Student.

Alleged Failure to Provide Timely Accessible-Format Written Course Materials

- **Summary of OCR's Investigation**

The Student alleged that ODS was not providing her with her approved academic adjustment of converted texts in a timely manner. She stated that sometimes she did not receive the converted texts until right before midterms and finals. Because of this untimeliness, she said that she was unable to keep up with class instruction, which caused her to receive grades below what she would have earned had she been provided the material timely. According to the Student, this occurred despite her providing ODS with her schedule well in advance of each term's commencement. She also stated that ODS used her copies of textbooks when converting the text, which necessarily took the books out of her use. The Student further said that this retention caused her to fail one course in spring 2012, because the delay lasted until finals week.

The Student also said that the University, when providing the converted texts, was not providing the books in their entirety. Instead, she asserted, the converted text was often missing items, such as pictures and footnotes. These texts, she further stated, were also unreadable by her computer's screen reader because of misspellings.

The University does not dispute that it approved the receipt of converted texts as one of the Student's academic adjustments, nor that this academic adjustment is necessary because of the Student's inability to visually concentrate for periods of time exceeding 30-45 minutes. To alleviate the stress on her eyes, the Student can listen to the texts on her computer through software that reads the converted texts out loud. She also can enlarge converted texts' font size, which allows her to read the actual text with less strain on her eyes.

- The University's General Process for Providing Alternate Format Texts

University witnesses described the process for an approved student to receive converted texts through the ODS Technology Center. As background, the Technology Center serves between 90-130 University students. In an attempt to manage the large amount of text conversions that students request at the beginning of each term, ODS enforces

deadlines by which students are to inform it of the texts they need converted. For spring 2012 and summer 2012, when the University was on a quarter schedule, the deadline was three weeks prior to the beginning of the quarter. Beginning in the fall of 2012, when the University switched to a semester schedule, the deadline was changed to four weeks prior to the beginning of the semester. ODS tells approved students to contact their professors as soon as possible to find out what books, articles, etc. are needed for the class. ODS also tells the students that they (the students) are to inform their professors that that they are using ODS services, and to ask the professors to send syllabi, articles, and other readings to a University database so ODS staff can access those files. ODS staff will also contact the professors to ascertain what books and readings will need to be converted.

In addition to these pre-semester submissions, ODS also asks students needing text conversion to bring a copy of their syllabi to the Technology Center during the first week of class. ODS then reviews the syllabi to determine how soon, and if, students will need any not-yet converted portions of textbooks. The University acknowledged and ODS witnesses confirmed that the Technology Center only converts “required” reading for its undergraduate students. If requested by the student, however, ODS will convert more than the required readings, including an entire textbook or articles for “recommended” reading. ODS witnesses stated that they have found that most students do not want the entire textbook converted, just the required readings. If a student requests more than the required readings, ODS will prioritize the required readings over the non-required portions. Only after ODS converts the student’s required reading and other students’ required readings will ODS convert the remaining parts of the textbook, which could include, if requested, the “front matter” (*e.g.*, the table of contents) and the “back matter” (*e.g.*, the appendix, index, table of authorities, etc.). Because of this prioritization, the front and back matter of a textbook will sometimes not be converted until near the end of the term. ODS checks with students requesting more than just the required readings to ascertain the material’s immediate need.

Witnesses told OCR that students and ODS usually find out about additional readings for classes beyond the textbooks (*e.g.*, articles) during the first week of class. To have those additional readings converted, ODS asks students to bring their copies of the additional readings to ODS as soon as possible. If ODS is able to obtain a copy from the library, it will. Otherwise, the requesting student has to leave a copy of the reading material with ODS while ODS converts it. ODS witnesses stated that ODS strives to work these readings into its schedule as soon as possible and to return them to the requesting student within 48 hours.

Witnesses explained that there are times when a conversion is delayed for reasons outside of ODS’ control. As examples, sometimes the bookstore does not receive the book in stock on time (although this delays receipt of the text for all students, with or without disabilities) and sometimes a professor is late in informing ODS about which particular textbook or article he or she plans on using during the upcoming term. If there is a delay, ODS tries to convert the text as soon as possible. It will contact publishers to see if it can get a copy of the textbook directly from them, or it will attempt to borrow a copy of the

textbook from the student (perhaps over a weekend) and convert it then. In this situation, ODS expects the student and professor to work together until the text can be converted, for example, to obtain any necessary extensions of time for coursework. ODS employees were not aware of any instances where an instructor refused to work with a student because of a delay in text conversion.

ODS witnesses stated that the time needed for ODS to convert a textbook varies based on the type of book. A novel, which is the easiest to convert, can possibly be completed in a week. A technical textbook, such as one used in engineering courses, can take two to three weeks to convert. In situations where the conversion involves a complicated text, the student may receive the converted text piecemeal throughout the semester. University witnesses stated that each section is made available to the student before the date when that topic will be addressed in class, per the course syllabus.

ODS also asks that students frequently check with ODS to see if their converted materials are ready. This includes textbooks submitted prior to the semester and other conversions that may take place during the term, for whatever reason. Otherwise, ODS tries to send students a notification of their completed conversions about once a week. When the conversion process is complete for a book, article, or portion of a book, the converted text is placed on the requesting student's designated shelf in the Technology Center. When a student asks ODS staff if their converted text is ready for pickup, staff will check the student's shelf to see if the material is there.

The University imposes fees on those students who submit their list of textbooks that need conversion after the University-imposed, pre-semester deadline. According to the University's "Technology Center Services Rules and Regulations," a late fee of \$15 per class is levied for a schedule turned in after the due date, unless arrangements were made prior to the deadline with the Technology Center coordinator. Beginning with the spring 2013 semester, the per-class late fee increased to \$25 for a schedule turned in after the start of the semester. According to University witnesses, the imposition of this fee is meant to motivate students to submit their requests for textbook conversion as early as possible. There is no maximum aggregate fee amount per term, but most students take, at most, four classes per semester. ODS staff can waive late fees and will frequently do so if the student kept ODS staff informed about the situation that led to the late request (*e.g.*, the student was having problems with financial aid or the student was trying to enroll in a class that had already reached capacity). In addition to the associated fee, textbook conversion requests received by ODS after the deadline are given a lower priority than those requests that were timely made. ODS witnesses indicated that materials are generally converted on a first-come, first-served basis, although they asserted that they still provide materials on time per the course syllabi or within a reasonable time period after receiving a late notice.

University calendars show that students can drop a class during the first week of classes in a term and receive a full refund for that particular class. The University's Technology Center coordinator told OCR she tries to work with students who miss a deadline because they dropped or added a class after the semester has started. If those students have kept

the Technology Center coordinator informed of the circumstances, she would waive the fee and not deprioritize their conversion requests, as would be done if the students otherwise missed a deadline.

In addition to the late fees, the University charges an administrative fee for the textbook-conversion process. The University imposes this fee regardless of the request's timeliness and the fee is in addition to the regular cost of the textbook. Per the University's "Technology Center Services Rules and Regulations," the administrative fee is \$10 per textbook, with a maximum total of \$60 per term. However, the Technology Center's coordinator told OCR that they usually do not charge a student more than \$40 in administrative fees per term. If a student drops a class and the Center has started the conversion, the student will still be charged the administrative fee. The administrative fee exists, according to one University witness, to assure that the students actually intend to use the converted textbooks they are requesting. The University's ODS webpage regarding services, however, asserts merely that the administrative fee is for "materials provided by the Technology Center." There is no fee to convert additional, non-textbook materials, such as articles.

Beginning with the fall 2012 semester, students are required to sign off on the ODS Technology Center's policies. According to University witnesses, these policies had existed prior to the fall 2012 semester, but copies were only given to students upon request. In addition to the four-week deadline for textbooks described above, these policies state that students must provide ODS five days' notice for converting additional reading materials. Although this five-day deadline exists, ODS staff stated they believe it is unlikely that ODS would charge a late fee to a student who did not meet this five-day deadline.

The conversion process itself is done by ODS Technology Center employees. The Center maintains a staff of 25-40, depending on the workload at the time. The staff includes the Technology Center coordinator and one graduate assistant, and the rest of the staff are student employees. They scan the relevant pages into the system, which then converts the pages into the student's required format (*e.g.*, Braille, Microsoft Word[®], etc.). The employees then review the converted pages to check for any errors before they are distributed to the students.

- The Student's Receipt of Alternate Format Texts

ODS originally provided the Student with her texts on CDs, which the Student was to pick up at the Technology Center. Then, at the Student's request, the method of delivery changed and the Technology Center emailed texts to her. The delivery method reverted back to CDs when the Student said she was not receiving the emails. The type of file for the converted texts has also changed over the years. ODS originally provided the converted files to the Student as .pdf documents. Then, at the Student's request, the texts were provided via Microsoft Word[®] documents. As of the time OCR completed its investigation, the Student was receiving texts in both Word and .pdf file formats. Towards the end of OCR's investigation, the Student complained that the University was

not sending her texts in a “tagged .pdf” format. However, e-mail correspondence from the University indicated that, on an occasion in xxxxxxxx 2013 when the assistant vice president for student affairs and director of community standards and student conduct (the assistant vice president) had sent her a tagged .pdf, the Student had complained and told him she needed documents in Word format.

ODS witnesses told OCR that the Student was approved for converted texts as an academic adjustment. When asked about ODS’s timeliness in providing the converted texts to the Student, the ODS employees stated that they went out of their way to make sure the Student received her converted texts timely because they knew that if they did not she would complain, yell, and make demands of staff, as she had a history of consistently doing. As such, ODS did not use a first-come first-served system with the Student’s requests and instead prioritized her requests, even if she made the requests late. The Technology Center coordinator indicated that her staff would work overtime and over the weekends to ensure the Student’s materials were completed.

ODS staff could not recall a single instance when ODS did not provide material to the Student in a timely manner. In fact, staff countered the Student’s timeliness allegations by stating that converted texts would sit on the Student’s shelf at the Technology Center for two to three weeks waiting for her to pick them up. They also noted there were times when she would never pick up materials they had converted for her for a class. In a follow-up interview, the Student admitted to OCR that there were instances when she would not pick up materials but claimed that was only because the texts were converted after the test on that material had already been given.

The University provided OCR with an electronic log that detailed steps taken by the Technology Center while converting the Student’s texts during the time period at issue in this complaint. OCR reviewed the log, together with course syllabi provided by the Student and the University. For the spring 2012 quarter, which began on March 26, 2012, records from the log show, for almost all readings, the texts were scanned, burned, and available for the Student to pick up prior to classes beginning. For xxxxxxxxxxxx, the records show the process was completed by January 4, 2012. For xxxxxxxxxxxx, records show the process for both books xxxxxxxxxxxxxxxxxxxx was completed by March 14, 2012, although the records also show that there was work done on one of the xxxxxxxxxxxx texts xxxxxxxxxxxx as late as April 27, 2012. Neither the Student nor the University, however, provided a copy of the syllabus for that particular course, despite OCR’s repeated requests.

Regarding the summer 2012 quarter, the Student’s courses began on June 11, 2012. For her xxxxxxxxxxxxxxxxxxxx course, records indicate that parts of the text conversion were completed on June 11, 2012. However, the logs also show that work continued to be done on this particular book throughout “June 2008,” and then resumed in “February 2009,” and again in “October 2009,” and finally in “February 2012.” It is possible that this was a textbook that the Technology Center had already converted for previous

that in early to mid-November the University worked on converting the text's xxxxxxxxxxxx xxxxxxxxxxxx. The course syllabus shows the course covered readings within the first production during the first portion of the semester and did not get into material exclusively found in the University's second production until October 15, 2012. Moreover, the syllabus shows that all of the course's assigned readings were included in the second production, and the materials converted in November were not materials contemplated on the course syllabus.

Regarding non-textbook, required readings, University records show that the Technology Center usually converted the Student's readings in advance of the course deadline for them having to be read. Toward the end of the semester, these conversions took place two weeks in advance of them having to be read. Toward the beginning of the semester, however, the conversions would be done either a few days before or the day of the date that the reading was to have been read.

In addition to timeliness, the Student also took issue with the quality of the text conversions. ODS employees, when asked about issues regarding the text-conversion quality, recalled some instances where the Student was dissatisfied. One occurred in the spring 2012 quarter when the Student had an issue with the conversion of additional readings for a particular class. The Student had provided copies of the readings to the Technology Center, saying that the professor had just given them to her. The Student also asked the Technology Center to contact the professor to see if there would be more readings that needed conversion. After checking with the professor, the Technology Center converted the documents provided by the Student and returned them to her three days after the Student had given them to the Center. A few days later, the Student emailed the Technology Center, claiming that the whole lot had to be redone. The Technology Center refused, saying that the conversions were already complete. The next day the Student again contacted the Technology Center, asserting that there were errors in the converted text, including misspellings and missing footnotes. The Technology Center reviewed the converted texts and found all footnotes had been included and that there were two minor misspellings. Contemporaneously, the Student also contacted the ODS office, complaining that there were problems with the converted texts she had received during her time at the University, including missing chapters, out-of-order chapters, and missing footnotes. Upon further investigation by ODS, it became clear that the Student's issues could each be explained. The words the Student believed to be misspelled were, in fact, words in a foreign language in the text. The out-of-order and missing chapters were purposely converted and provided in that manner because it reflected the order of the course readings per the course syllabus, as had been determined by the professor.

University employees also recalled a similar issue with materials allegedly being provided out-of-order from the summer of 2012. There, the Student told the Technology Center that it had failed to convert an entire chapter of her math book. Upon investigating, the Technology Center determined that the professor was using a customized version of the textbook that had excluded the allegedly missing chapter.

OCR asked the Student to provide examples of erroneous conversions she had received from the Technology Center. She replied that she had returned most of the problematic conversions to ODS because they were not useful to her. She did, however, provide OCR with a text, which she alleged contained examples of misspellings and missing footnotes. She also provided textbook scans that appeared to show lines of text missing and, in some instances, whole blocks of text missing. OCR provided the University with a copy of the scans that purportedly were missing text. ODS employees replied that the scans were not the work product of the University's Technology Center.

- **Applicable Regulatory Standards**

The Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit recipients or public entities from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others.

A person with a disability is defined, in relevant part, as a person who has a physical or mental impairment which substantially limits more than one major life activities. 34 C.F.R. § 104.3(j)(1)(i). A person with a disability is "qualified" with respect to postsecondary education services if the person meets the essential eligibility requirements for the receipt of such services. 34 C.F.R. § 104.3(l)(3).

In addition, the Section 504 regulation provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are 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 Title II regulation requires that public entities such as the University make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability. 28 C.F.R. § 35.130(b)(7). Title II also requires, at 28 C.F.R. § 35.160(a), that public entities take appropriate steps to ensure that communications with those with disabilities are as effective as communications with others.

The Section 504 regulation provides, at 34 C.F.R. § 104.44(d)(1), that a recipient shall take such steps as are necessary to ensure that no person 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. The Title II regulation, at 28 C.F.R. § 35.160(b), requires that a public entity furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation requires that the type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place; and that, in order to be effective, auxiliary aids and

services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. The regulation further states that, in determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 28 C.F.R. § 35.160(b)(2).

Students with disabilities, especially visual impairments, are to be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as sighted students. Educational institutions must ensure that students with disabilities can access the educational opportunity and benefit with substantially equivalent ease of use as students without disabilities. Should the educational institution use a device that is not fully accessible, the institution must provide accommodations or modifications that permit students with disabilities to receive all the educational benefits provided by the technology in an equally effective and equally integrated manner.

For technology to be accessible, a person with a disability must be afforded the opportunity to acquire the same information, engage in the same interactions, and enjoy the same services as a person without a disability in an equally effective and equally integrated manner, with substantially equivalent ease of use. The person with a disability must be able to obtain the information as fully, equally and independently as a person without a disability. Although this might not result in identical ease of use compared to that of persons without disabilities, it still must ensure equal opportunity to the educational benefits and opportunities afforded by the technology and equal treatment in the use of such technology.

Postsecondary education institutions do not have a duty to identify students with disabilities. Students in institutions of postsecondary education are responsible for notifying institution staff of their disability should they need academic adjustments. The student must inform the school that she has a disability and needs an academic adjustment. Postsecondary schools may require students with disabilities to follow reasonable procedures to request an academic adjustment. Students are responsible for knowing and following those procedures. Schools may set reasonable standards for documentation. Schools may require students to provide documentation prepared by an appropriate professional, such as a medical doctor, psychologist, or other qualified diagnostician. The required documentation may include one or more of the following: a diagnosis of the student's current disability, as well as supporting information, such as the date of the diagnosis, how that diagnosis was reached, and the credentials of the diagnosing professional; information on how the student's disability affects a major life activity; and information on how the disability affects the student's academic performance. The documentation should provide enough information for the student and the school to decide what is an appropriate academic adjustment. If the documentation that the student provides does not meet the postsecondary school's requirements, a school official should tell the student in a timely manner what additional documentation the student needs to provide.

If an auxiliary aid is necessary for classroom or other appropriate (nonpersonal) use, the institution must make it available, unless provision of the aid would cause undue burden. A student with a disability may not be required to pay part or all of the costs of that aid or service. An institution may not limit what it spends for auxiliary aids or services or refuse to provide auxiliary aids because it believes that other providers of these services exist, or condition its provision of auxiliary aids on availability of funds. In many cases, an institution may meet its obligation to provide auxiliary aids by assisting the student in obtaining the aid or obtaining reimbursement for the cost of an aid from an outside agency or organization, such as a state rehabilitation agency or a private charitable organization. However, the institution remains responsible for providing the aid.

28 C.F.R. § 35.130(f) of the Title II regulation specifically prohibits a public entity from placing a surcharge on a particular individual with a disability to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required.

For OCR to find that the University discriminated against a student on the basis of disability by failing to provide academic adjustments or auxiliary aids and services, the evidence must demonstrate that: (1) the student is a qualified individual with a physical or mental impairment that substantially limits one or more major life activities; (2) the student notified the recipient of his/her disability and need for academic adjustments, including auxiliary aids; (3) there is an academic adjustment or auxiliary aid that, if provided, would allow the student to participate in the recipient's educational program; and (4) the recipient failed to provide appropriate and effective academic adjustments or auxiliary aids.

- **Analysis and Conclusion**

Although it is not clear from the evidence obtained that the Student followed all of the University's written procedures in identifying and documenting her disability and making requests for academic adjustments, the evidence supports that the Student made her vision difficulties known to the University early on in her enrollment, that the University accepted those difficulties as a disability, and that it agreed to provide her academic adjustments based on that identified disability. The unrefuted evidence also supports that the Student was approved by the University to receive converted texts as an academic adjustment for that disability.

However, the evidence is insufficient for OCR to find that the University failed to timely provide the Student with her academic adjustment of converted texts for required course assignments during the time period at issue in this complaint. OCR notes that, despite numerous requests to both the Student and the University, OCR could not obtain all syllabi from the Student's courses during the relevant time period. Moreover, the University's data logs are, for the most part, either incomplete or incompatible with those syllabi that were provided (owing to the syllabi assignments being chapter-oriented and the ODS log being page-centric). However, the data log for the Student's fall 2012 xxxxxxxxxx course shows that, while the textbook conversions were not completed prior

to the start of the semester, they were completed prior to the assigned reading dates, as set forth in the course syllabus. Similarly, the log shows that conversions for non-textbook readings were completed prior to the date when the class was to discuss the reading. Moreover, the evidence supports that the Technology Center provided the Student with required reading materials in alternate format within a couple of days of her conversion requests. There is also evidence that the Student was not consistently picking up converted material from the Technology Center in a timely manner, so that her late receipt of texts in at least some instances was due to her action and not the University's. The evidence OCR was able to obtain did not suggest that the conversion process, including timeliness, for the xxxxxxxxxxxx course for which specific documentation was available was different than those of all of the Student's courses during the three terms at issue.

As such, given that the Student and the University witnesses offered different recollections regarding the timeliness of the providing of text conversions, and because the data for the architecture course supports that the University did provide the conversions for required readings in a timely manner, OCR finds that there is insufficient evidence to conclude that there was a violation of Section 504 or Title II based on the alleged untimeliness of the provision of converted required readings.

There is, however, sufficient evidence to show that the University failed to provide complete, converted textbook material to the Student in a timely fashion and that the University is generally failing to provide this information to students with disabilities who require alternate format texts. Publishers include other book materials, such as appendices, glossaries, and tables of contents, to assist the readers in locating and understanding the book's content. The University acknowledges, and the documents show, that these guiding materials, called "front matter" and "back matter" by the University, are not given conversion priority and are usually converted last. This results in a student receiving the guiding material near the end of a semester, if at all, thus denying the student an equal opportunity to participate in and enjoy the respective courses and resulting in the University providing communication to students with disabilities that is not as effective as communication it provides to others. There is, accordingly, sufficient evidence to find that the University is violating the Title II and Section 504 regulations at 28 C.F.R. §§ 35.130 and 35.160 and 34 C.F.R. §§ 104.4 and 104.43 by failing to provide or to timely provide textbook front and back matter to students with disabilities who need alternate format texts.

Similarly, the University acknowledges that it only converts "required" reading for its undergraduate students. Materials designated by the instructor as "recommended" reading are not converted, except on request, and even then are given lowest priority to complete by the Technology Center. This means that students without disabilities are afforded the opportunity to read course materials that the University instructor has recommended for a better understanding of the course topics while those students needing converted texts are not afforded this opportunity. OCR finds that this practice regarding recommended reading also violates Title II and Section 504.

The Student also alleged that the converted materials she received from the Technology Center were error-filled and missing portions of the text, such as footnotes and page numbers. OCR asked the Student to provide examples of the problems she experienced. The Student pointed out that she did not usually keep the erroneous conversions, as they were of little use to her. She did, however, provide some scans, which she stated were examples of conversions from the University's Technology Center. While the texts the Student provided did have scanning issues, including missing lines and paragraphs, the University denied that the Student-provided scans were created by the Technology Center. The University could not say where these scans had originated. The Student also provided OCR with a text that she asserted to be an example of the spelling issues found within texts converted by the University's Technology Center. OCR reviewed that text and found no spelling issues. The text, which dealt with xxx, featured several technical terms and foreign names, which, though spelled correctly, may have been difficult for the Student's screen reader to interpret. The University continues to assert that the converted texts that it did provide were all reviewed and without errors or incomplete information prior to being given to the Student, and the evidence OCR was able to obtain during this investigation did not suggest otherwise.

OCR therefore concludes that there is insufficient evidence to support the complaint allegation that the University provided the Student converted materials that contained significant errors or were missing sections of text.

During OCR's investigation of the complaint allegations, it learned that the University charges students with disabilities who receive academic adjustments through the Technology Center late and administrative fees related to text conversion. Under Section 504 and Title II, a recipient public institution may not charge students with disabilities more for participating in its programs or activities than it charges students who do not have disabilities. This includes fees for academic adjustments. Moreover, the University's requirement that students needing alternate format texts provide their course schedules to the Technology Center weeks prior to each semester, under threat of late fees and not being able to receive their required course materials on time for them to use for classes, results in students with disabilities having far less flexibility in choosing their course schedule than is given to students who do not have disabilities. Other students are able to finalize their course schedule into the first week of the semester without penalty. This different treatment does not afford students with disabilities an equal opportunity to enjoy the benefits of fee-free, flexible course selection available to students without disabilities. Thus, OCR concludes that the University is violating Section 504 and Title II by imposing administrative and late fees on students who receive academic adjustments through the Technology Center.

Alleged Failure to Provide Academic Adjustments and Equal Access to Art Course and Math Course in Fall 2012

- **Summary of OCR’s Investigation – Art Course**

The Student alleged that the University failed to provide her with the academic adjustments she needed to successfully complete a lithography course offered through the University’s art department. Specifically, she stated that her disability prohibits her from lifting and otherwise maneuvering heavy objects, which included a stone that was integral to the lithography course. Because of this limitation, the Student originally went to ODS and asked for an academic adjustment for the lithography course, which course was required for her major. She asserted to OCR that she had repeatedly requested a substitution for the lithography course prior to enrolling in it, but that this request had been denied. The University reported to OCR that during the approval process an ODS employee asked the Student if the lifting and maneuvering of the stone were essential aspects of the course. Based on the Student’s negative reply, ODS granted the Student use of a student assistant to help with the lifting and maneuvering of the stone for the class. The Student alleged that she was allowed to have help from the assistant during the class from the beginning of September to xxxxxxxxxxxx, 2012, but then after the professor complained to ODS the University discontinued the academic adjustment. She told OCR that she then requested to use a lightweight aluminum material in place of the grinding stone used in the class but that ODS did not follow through on this request. She alleged that eventually the University allowed her to substitute an advanced drawing course, but that the University then did not provide her academic adjustments she needed to participate in that course.

The Student stated that she never received anything in writing from ODS about the approval of the original academic adjustment for the lithography course (or for any other academic adjustment, as noted above).

The chair of the art department explained to OCR that, in order to attain a B.F.A. at the University, a student must take the University’s core courses, plus 77 credit hours in the art department. The art department hours must include foundation-level courses, five art history courses, six courses in a student’s chosen area of concentration, and 17 hours of art elective courses. A student must complete at least one course in each of the following program areas: painting, sculpture, printmaking, and photography. The chair of the art department noted that students can fulfill the printmaking course requirement through any of the following types of courses: relief (woodcut) printmaking, intaglio (etching in metal plates), lithography (use of a stone for printing), or screen printing.

The lithography professor for the course at issue in this allegation explained to OCR the lithography process that she teaches in the course at issue in this complaint. She said that students work with stones and they start with smaller stones, about 30-40 pounds, at first. They grain the stone with another stone or with a levigator to create a work surface, then

they draw on the surface, process it with specialized chemicals, and ultimately make prints from the stone. Each student uses their same stone the entire semester; once they finish printing one image, they re-grain their stone to start over. She said that the classroom has a hydraulic lift for use by students who are unable to lift their stones.

The lithography professor told OCR that she initially agreed with the Student's use of an assistant, with the condition that the Student had to be physically present while the assistant was lifting and maneuvering the Student's stone. After just a few days, however, the professor noted that the assistant was lifting and maneuvering the stone in the Student's absence. The professor noted that the Student had previously told the professor that she did not want to come in over the weekend to work on her class project, although the syllabus stated that students were expected to do about eight hours of work for class outside of the regular class meeting times. The professor said that she questioned the Student and the assistant, who was also a student in the class, and the assistant confirmed that she had been performing work for the Student on the Student's stone in the Student's absence. The professor stated that she then contacted ODS about the issue, and ODS asked the professor whether the work that the assistant had been performing included essential course material. The professor replied that it did, and ODS informed her that every student had to complete his or her own essential course material. The ODS associate director confirmed to OCR that the professor had contacted ODS about this on xxxxxxxxxx, 2012, and mentioned to ODS at that time that there was a lift in the room that the Student could use to move her stone. Upon its request, the professor provided ODS with a copy of an outline of the essential elements of the lithography course, which included maneuvering the stone. ODS then told the assistant that she was not to assist the Student further until ODS could meet with the professor and the Student to determine appropriate academic adjustments for the class. The professor stated that, even after this, on at least one occasion she found the assistant processing the Student's stone for the portion of the course involving using gum arabic (a viscous liquid rubbed on the stone, after which the stone is etched using drops of nitric acid), and had to tell her to stop doing the Student's work. The professor also stated that the Student had come to her complaining about other problems, such as asserting that she was suffering lost vision, migraines, and/or nausea due to fumes in the class. The professor suggested to her that she use a mask, and that she work by a vent and take breaks if she was feeling dizzy, but the Student did not avail herself of any of these options. She also did not go to ODS to request any academic adjustments for the class related to fumes.

The ODS associate director told OCR that the Student at first refused to meet with ODS and the professor about the lithography class after the professor had raised concern about the assistant doing the Student's coursework for her, and it ended up taking a month to schedule the meeting. The meeting was held on xxxxxxxxxx, 2012. OCR interviewed the University employees who attended the meeting, including the assistant vice president, the ODS associate director, an ODS academic support services coordinator, the chair of the art department, and the lithography professor. The Student and the Student's advocate also attended the meeting.

The University witnesses who attended the xxxxxxxx meeting said that they discussed the core elements of the course and that another student could not do the work on the stone for the Student, or else the Student would not be able to achieve the skill needed to pass the course. The assistant vice president recalled the Student at the meeting stating that she was unable to grain the stone because she could not move it or manipulate it due to her back problems, and that she also claimed to have chemical sensitivity; he asserted that the documentation she had submitted to ODS did not support either of these contentions. University witnesses confirmed that at the meeting the Student brought up Internet research she had done about an alternate process she believed she could use for the lithography course. The professor explained to OCR that the Student specifically referred to “pronto plates,” a more remedial technique that is used with grade-school students as a basic introduction to lithography. The use of pronto plates, she said, is not the same as lithography. Accordingly, the professor gave input at the meeting that the Student’s proposed alternative method was not an appropriate substitution.

The art department chair noted to OCR that the Student had asked several years before to substitute a xxxxxxxx class for the B.F.A. printmaking course requirement. He said that he would not permit that substitution, but that instead he had told her that he would allow her to substitute a drawing course for the requirement, since drawing was the closest available to printmaking. Therefore, he was surprised to learn that she had enrolled in the lithography course. He said that during the xxxxxxxx meeting he reiterated that she did not have to take the lithography course to meet the printmaking requirement and that he would approve her to take the course Advanced Drawing as a substitution for the requirement. The University witnesses stated that the Student then decided to drop the lithography class and sign up for the advanced drawing course. She enrolled in the substitute course for the spring 2013 semester. The University gave her a full refund for the lithography course.

The Student told OCR she then did not receive necessary academic adjustments for the advanced drawing class during the spring 2013 semester. The Student told OCR that she did not apply with ODS for any academic adjustments for that class. She insisted that the ODS associate director had told her at the xxxxxx 2012 meeting that she (the ODS associate director) would go directly to the advanced drawing instructor to work out the academic adjustments the Student needed for the course. The ODS associate director denied making such a representation. OCR’s review of an audio recording of the xxxxxx, 2012, meeting demonstrated that the representation was not made. When the Student tried to go directly to the course instructor to request academic adjustments for the course, the course professor told her that she, as an instructor, was not able to grant academic adjustments, per the University’s disability services process. The Student was told to follow the correct process to request academic adjustments for the course, but she did not. She was, however, still able to receive her already-approved academic adjustments for this course and her other courses.

When provided the opportunity to respond to the information submitted by the University, the Student acknowledged that there was a lift available in the lithography classroom, but stated that it was difficult to maneuver, that her stone was too small to work with the lift because they had given her a lighter-than-usual stone to work on (about 22 pounds), and there were obstacles in the room (*e.g.*, a trash can) keeping her from being able to use the lift to get the stone where it needed to be. She acknowledged there was one time when the student assistant worked on her stone when she was not present. She said that she had to leave for another class and asserted that the assistant was only working on preparing the stone. However, she acknowledged, she had only been approved to have the assistant lift the stone for her. She then asserted that she had been under the impression the assistant was also approved to grind the stone for her.

- **Summary of OCR’s Investigation – Math Course**

The Student stated that the University failed to provide her necessary academic adjustments regarding an elementary algebra course she enrolled in during the fall 2012 semester, xxxxxxxx. The Student stated that the math course was an online course that uses ALEKS[®] software, which was not accessible on her home computer. As such, she said that she had to come to campus to do the coursework, while other students were able to take the course from anywhere. She asserted that her inability to take the course from anywhere put her behind the other students in the class. The Student said that there was also an issue with the course instructor not sending the course examinations to the ODS testing center, and it took two weeks to get that issue straightened out. The Student also said that she was at a disadvantage because the required tests that a student must pass before moving on to the next area of study had to be taken on campus. This rule applied to everyone, but, because the Student needed to take her tests at ODS, other students could take their tests during class time, while she could not. The Student said she took the tests using an enlarged computer screen because the course software would not read the math problems to her.

The University’s coordinator for the elementary math course (the coordinator) explained that xxxxxxxx is a remedial math course, which does not carry credit toward graduation but is a prerequisite for a student to be able to take upper-level math courses. Students must take a math placement test upon enrollment at the University, and that test in conjunction with their ACT math score determine whether they have to take xxxxxxxx. For students who test into xxxxxxxx, passing the course is required for graduation; many students also will have to take an additional remedial math course and at least one year of college math to graduate, depending on their program’s requirements.

The coordinator stated that, at the same time as the change of the University’s academic calendar from quarters to semesters, the University also changed its teaching format for xxxxxxxx. Most sections of the course, the coordinator said, are now computer-based instead of pencil-and-paper based. The University’s provost made this change. The coordinator was asked to research programs, and she visited other universities who use ALEKS[®]. In doing her research, the coordinator said that she had asked the other universities about disability accessibility and had been told that there had not been an

issue. The coordinator did not consult with anyone at the University's ODS about the program prior to it being implemented. The coordinator stated that ALEKS[®] is not compatible with JAWS[®] screen reading software, because it cannot read equations aloud. She was not sure whether ALEKS[®] works with ZoomText or other screen enlarging software. The ODS associate director told OCR that ALEKS[®] is compatible with screen enlarging programs, but confirmed that it is not compatible with screen readers or other assistive technology. The coordinator noted that the University was considering expanding the use of computer-based teaching for additional courses in the future.

The coordinator stated that the University has large-screen monitors available for students with disabilities and can also provide individual proctors, e.g., for a student who needs someone to read the material on the screen to them. She also stated that students with disabilities would be permitted to opt out of the computer-based format and to take the whole course in a hybrid format (involving the use of the computer-based teaching and traditional classroom lecture) or in a fully pencil-and-paper, traditional format.

For the semester at issue in this complaint, students started the xxxxxxxx course by taking an assessment through ALEKS[®], which then determined what the student already knew well enough and what topics the student needed to practice. The program then gave math problems to the student on the areas needing practice until the computer program determined that they had sufficiently learned, or "mastered," the respective material. There was an "Explain" option the student could select if they needed help on a topic. Once the computer program determined the student had mastered all the topics in a unit, the student was permitted to take the test for that unit. When the student passed the test, the student could move on to the topics of the next unit. The program also did periodic assessments of a student if the student had worked on problems for a long time without making much progress. The coordinator explained that each class section was assigned two scheduled sessions a week in University's math studio during which they could work through ALEKS[®] on the studio computers, and proctors were available to assist the students. The students were required to take their assessments and tests at the math studio, although they could do their regular coursework either at the studio or anywhere. In addition to the class sessions, the coordinator said the math studio was open every weekday from 8:00 a.m. to 8:00 p.m. and for three hours on Sunday, during which times help was available from the proctors.

The coordinator told OCR that the Student was provided a large-screen monitor in the math studio to use, but there had been an issue at the beginning of the semester in getting the large-screen monitor's resolution to a point where the Student indicated it worked for her. This issue, however, the coordinator said, was rectified in a "matter of days," and, to compensate, the coordinator extended the deadline for the Student to complete the course's first unit. The Student was also provided an individual proctor throughout the course.

The coordinator said that the Student came in to see her about halfway through the semester and told her that the situation “was not working for her,” although the Student did not elaborate on what was not working. She offered to let the Student complete the course through a traditional pencil-and-paper format on this occasion and at least one other time during the course. The Student refused both offers, indicating that she preferred the computer-based method. At one point the Student changed her mind and opted to switch to the pencil-and-paper method, but she changed her mind again, and said she wished to continue with the computer-based method.

With respect to the Student’s assertion that she was unable to use ALEKS[®] at home due to her disability, the coordinator noted that she had reviewed the ALEKS[®] records, which showed that the Student had worked on the course a lot while off campus. For one particular unit, the records showed that the Student worked on the software for a total of xx hours and x minutes, with all but 3 of those hours being work done away from campus. The coordinator also noted that the program would automatically shut off after a period of nonuse, and the records show what the Student worked on and how she did, so the xx hours were likely to have been active hours reflecting the time the Student was working through ALEKS[®].

During the course of the semester, the Student called the coordinator’s assistant a couple of times to complain about working from home. However, the issue was that the Student did not understand that she had to come to campus to complete the assessments and tests, just like everyone else. The coordinator said that the Student could take her tests and assessments at ODS as an academic adjustment and, to the coordinator’s knowledge, she did so. The ODS associate director told OCR that the Student did take the assessments and tests at ODS, and she could schedule the tests with 24 hours’ notice. Typically, ODS would provide the test proctor, but for the Student for xxxxxxxx the math department provided the test proctor so the proctor would be a person familiar with the course material and the ALEKS[®] software.

The assistant vice president, who was assigned partway through the fall 2012 semester to be the University’s main point of contact with the Student, following a large number of calls and emails from the Student to many different departments at the University, said that there was not a single time when the University was not able to meet the Student’s requests to take xxxxxxxx assessments and tests at ODS, including providing her with a proctor. He noted that this was despite the Student, on multiple occasions, providing very short notice. For example, she would send him an email at 6:30 p.m. demanding to schedule a test the next morning. He also noted that there were times when they would have everything set up for her to take a test and then she would not show up or cancel. For this reason, he asked her to start giving 24-48 hours’ notice to schedule tests, after which she improved but still did not give much notice.

The Student also would call to complain that she had entered a correct answer but the computer program had marked it as incorrect. The University investigated and found that to be untrue.

The coordinator further explained that, although students were supposed to complete the entire course by the end of the semester (December 7, 2012), the coordinator had given the Student an extension of time of over a month (until xxxxxxxxxxxx, 2013) to finish the course. The Student was allowed to come in over the winter break and use the school's math lab, and the Student only availed herself of the offer for a few days, particularly toward the end of the extended time period, including, on one occasion, working directly with the coordinator. The coordinator said that the Student did not complain when she came in those days of having any difficulties with the work related to her disability. By the xxxxxxxxxxxx deadline, the Student had only passed two of the four required units and therefore she failed the class.

The Student was provided an opportunity to respond to the information submitted by the University. The Student stated that for the first three weeks the coordinator had refused to allow for her to take assessments at ODS, which had a large monitor that allowed for easier viewing. She said this caused a three-week delay in her ability to take assessments. Because of this delay, the Student asserted, she did not even bother to start the course because she was not going to use her nonrefundable ALEKS[®] program access card if she would have to drop the course. She also asserted that one time the proctor did not show up although she could not remember if it was for an assessment or a test. Then she clarified that the proctor did come but was late. However, there was no time limit for the test and she did finish it and received the assistance from the proctor.

The Student stated that the University did not give her extra time she needed to finish the course. She then acknowledged that she was given a three-week extension, but said that was granted because they had failed to accommodate her during the semester. She said that she needed an additional extension of time to complete the course because she was under a doctor's care for a major loss of vision towards the end of the semester. The Student said she e-mailed a doctor's note to the coordinator and the assistant vice president that explained this. OCR asked the Student to provide it with a copy of this e-mail. Despite the request, the Student did not provide a copy of the e-mail.

The Student at first denied being offered the opportunity to take the course in a pencil-and-paper format. She then admitted she was offered that alternative, but explained that it was offered once the course had already started and she felt she would be behind. She also believed her assistive technology on her home computer would not have been able to read the textbook to her. When asked about the availability of a proctor to assist her, she claimed that service was only available during class time. When asked about the University's description of the math lab being open outside of class hours with proctor assistance available, the Student stated that the lab hours were not convenient to her. She acknowledged that the available lab hours were the same for all students in the class, regardless of disability. The Student felt it was impossible for her to work on the math program at home because she did not have a proctor at home. She also said that even if she went to the lab there would be no proctor available to work with her. She also noted that the lab was closed on Saturdays, when she was generally available to go into the lab, but admitted that the lab was closed for all students that day.

- **Applicable Regulatory Standards**

As stated above, the Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) and the Title II implementing regulation at 28 C.F.R. § 35.130(b)(1)(ii) prohibit recipients or public entities from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others. The Section 504 regulation also provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are 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.

Under both Section 504 and Title II, recipients are not required to make modifications that would fundamentally alter the nature of the service, program or activity. While a university must accommodate course or other academic requirements to the needs of individual students with disabilities, academic requirements that can be demonstrated by the institution to be essential to its program of instruction or to particular degrees need not be changed. 34 C.F.R. § 104.44(a); 28 C.F.R. § 130(b)(7). With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give great deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. While it reasonably might be expected that a course instructor would be included in the process of determining what requirements are essential to participation, allowing an individual professor to have ultimate decision-making authority or to unilaterally deny an academic adjustment is not in keeping with the diligent, well-reasoned collaborative process that warrants the accordance of deference by OCR to the judgments of academic institutions. The decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful and rational review of the academic program and its requirements.

Equal access for students with disabilities must be considered as new technology is integrated into the educational environment. All school programs or activities – whether in a “brick and mortar,” online, or other “virtual” context – must be operated in a manner that complies with Section 504 and Title II. The implementation of an emerging technology should always include planning for accessibility. The planning should include identification of a means to provide immediate delivery of accessible devices or other technology necessary to ensure accessibility from the outset.

Further, an accommodation or modification that is only available at certain times (such as an aide to read to the student) will not be considered “equally effective and equally integrated” where other students have access to the same information at any time and any location, as is the case with a website or other online content.

Traditional alternative media (e.g., books on tape) can still be used as an academic adjustment under appropriate circumstances. If, however, a school chooses to provide emerging technology and proposes traditional alternative media as an academic adjustment or modification to provide equal access to the educational opportunities and benefits provided to all students, the alternative media must provide access to the benefits of technology in an equally effective and equally integrated manner. Some forms of emerging technology may readily offer students educational opportunities and benefits that traditional alternative media cannot replicate.

- **Analysis and Conclusion**

- Art course

University witnesses provided credible and consistent statements supporting that the chair of the art department offered the Student, even before she enrolled in the lithography course at issue, the ability to enroll in an advanced drawing course as substitute course based on her earlier requests to have the printmaking course requirement changed as an academic adjustment. The Student enrolled in the lithography course anyway. She then went to ODS and requested an assistant and was approved at a minimum to have an assistant lift her stone for her. However, the evidence supports that the Student had the assistant actually work on her stone for her, even while she was not present. In addition, the information from ODS supports that its approval was based on the Student's representations that the assistant would not be performing essential components of the course and that ODS employees did not know a lift was available in the classroom.

When the course professor raised concerns with ODS, the Student at first refused to meet, which resulted in about a month during which she was not allowed to use the assistant. When the meeting did occur on xxxxxxxxxx, 2012, the evidence supports that a group of relevant University officials, including the course instructor, the department chair, ODS representatives, and the assistant vice president, met and carefully considered the course requirements, the Student's requested academic adjustments (which as of that meeting also included the use of pronto plates), and the available alternatives. The Student was part of this conversation, along with her advocate. Through this deliberative process, the University determined that allowing the Student to use an assistant to prepare the stone (as opposed to merely lifting it), especially in the Student's absence, or to use pronto plates instead of a stone, would fundamentally alter the lithography course. The entire purpose of the course is to learn to prepare and use a stone to make art prints. Moreover, the disability documentation the Student had provided to the University did not support the extensive limitations she was describing in her requests for these academic adjustments. Nevertheless, the meeting participants discussed alternatives to the requested adjustments, and agreed that the Student could take an advanced drawing course as a substitution to the lithography course to satisfy the printmaking requirement for the degree she was pursuing. The University allowed the Student to withdraw from the lithography course and provided her a full refund.

Although the Student alleged she was not provided academic adjustments for the advanced drawing course, OCR finds that the evidence does not support that she followed the University's procedures to request any academic adjustments for the course beyond what she had already been approved for when she first enrolled at the University. It is not clear from the information the Student provided to OCR what specific academic adjustments she was requesting directly from the professor. She asserted that the ODS associate director said she would work out academic adjustments for the Student with the professor, but the evidence, including an audio recording of the meeting at which the Student said the ODS associate director made this representation, does not support this.

Based on the above, OCR finds that the evidence is insufficient for OCR to conclude that the University violated Section 504 or Title II with respect to the lithography course, as alleged.

OCR notes, however, that the University and the Student both agree that she did not receive any paperwork from the University detailing her approval for disability services or the academic adjustments that she was approved to receive. The University generally does not provide written notice of approved or denied academic adjustments to any student. As demonstrated throughout the factual findings for this complaint, the University's failure to specify, in writing, what particular academic adjustments the University has approved for the Student has led to repeated confusion and disputes among all parties as to what is being provided and what is supposed to be provided, including for this lithography course. In addition, ODS accepted the Student's documentation of her disability despite it apparently being insufficient under its procedures, which has led to a lack of understanding by University officials as to what her disability is and what academic adjustments would be appropriate.

- Math course

The University transitioned its remedial elementary algebra course, which is a requirement for graduation for students who do not test out of it through the University's math placement test, in the fall of 2012 to a computer-based method of instruction that was incompatible with screen reading software used by students with certain types of disabilities. The Student uses screen reading software at home because of her disability.

The evidence supports that the University attempted to make academic adjustments to the math course for the Student. The University provided a large-screen monitor at the math studio and adjusted the resolution until the Student indicated it worked for her. The University also had proctors available for the Student for assessments and tests, class sessions, and the days and hours the math lab was open outside of class sessions. The University also offered to allow the Student to take the course using a traditional, pencil-and-paper method. It also provided extra time for the Student to take the course, extending the Student's deadline for course completion a full month past the deadline all

other students in the course were held to. The evidence did not support the Student's assertions that the coordinator refused to allow her to use her academic adjustments the first three weeks of the course or that she was unable to take her tests and assessments at ODS.

However, the University's use of course software that was incompatible with screen reading programs resulted in the Student not receiving an equal opportunity to experience the benefits a computer-based course with respect to the regular coursework. All students taking the course were required to come to campus to take tests and assessments, during the days and hours the math lab was open. Other students, however, were able to complete their regular coursework from home or anywhere with a computer, at any time on any day. Although the University provided human readers to the Student, this service was only available to her on campus during the set math lab hours. The University therefore discriminated against the Student on the basis of disability and any other students with disabilities requiring screen reading technology by implementing the non-accessible ALEKS[®] software. The traditional alternative that the University provided, human readers, did not provide these students access to the benefits of technology in an equally effective manner to that provided to students without disabilities. OCR finds that the University is in violation of 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130 with respect to the computer-based format for xxxxxxxx.

It is not clear, however, whether the Student's failure in the course was the result of discrimination by the University. She admitted not having started the coursework until three weeks into the semester, and did not avail herself of most of the extra weeks she was provided after the end of the semester to finish the course. She asserted that she had a disability-related reason for needing an even longer extension, but the documentation did not support this. She did not want to come to campus to complete tests and assessments, but this was required of all the students, not just students with disabilities. Although she indicated that she needed to use her screen reading software to access the course materials outside of the math lab, the ALEKS[®] record show that she was actively completing coursework at home for the units she did work on. Therefore, OCR finds that the evidence is insufficient for OCR to conclude that the Student failed the course because of the University's actions.

Alleged Retaliation

- **Summary of OCR's Investigation**

The Student alleged that, at the xxxxxxxxxx, 2012, meeting described above, the assistant vice president threatened her with a student code-of-conduct charge because the Student had advocated for herself as a student with a disability. She said that the assistant vice president claimed at the meeting that she had made seven telephone calls to her ODS services coordinator although that was untrue. She thought this might be what he was planning to discipline her for, but was not sure. She said she was also told she would be written up for her behavior at the xxxxxxxxxx meeting although she did not see what she had done during the meeting that would have violated the student code of conduct.

The Student and the University forwarded to OCR a copy of a letter dated xxxxxxxxxx, 2012, from the assistant vice president to her summarizing the xxxxxxxxxx meeting. The letter does not mention any potential or perceived student code-of-conduct violation by the Student. As noted above, OCR interviewed University staff members who attended the meeting. They either stated that they did not recall the code of conduct being brought up or that, if it was brought up, it was not as a threat, but as a comment that having another person provide unapproved assistance for a course assignment, as may have been happening with the Student's assistant in the lithography class, could be a violation of the University's student code of conduct. During interviews with University employees, it became known that the Student had likely made an audio recording of the meeting. The Student had not made the existence of this recording known to OCR, so OCR requested a copy. Upon receipt, OCR listened to the recording. On the recording, the assistant vice president can be heard referencing the University's student code of conduct. Specifically, he referenced potential violations of the code of conduct that may arise when a student assists another student, without prior professor approval, in completing an assignment. There is no evidence that any code of conduct charges were ever brought against the Student.

When provided the opportunity to respond to the information obtained by OCR, the Student then stated that it was her ODS services coordinator who was threatening to bring the code-of-conduct charge against her, although it was the assistant vice president who voiced the threat to her at the meeting. She then said she probably had made seven telephone calls to ODS, but that they would have all been for valid reasons. She confirmed that no code-of-conduct charges had ever actually been filed against her.

- **Applicable Regulatory Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.61, incorporates by reference the regulation implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, at 34 C.F.R. § 100.7(e). That section provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose or interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under the regulation. The Title II regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

To establish a *prima facie* case of retaliation under Section 504 or Title II, *i.e.*, one capable of supporting an inference of retaliation, OCR examines: whether an individual engaged in a protected activity, such as making or participating in a complaint or opposing discrimination under that law; whether the recipient had notice of the individual's protected activity; whether the recipient took an adverse action against the individual at the same time as or after the protected activity, that is, one that significantly disadvantaged the individual as to his or her status as a student or beneficiary of the recipient's program or his or her ability to gain the benefits of the program or that would reasonably have acted as a deterrent to further protected activity; and whether there was a causal connection between the protected activity and the adverse action.

If all of these elements establish a *prima facie* case, OCR next considers whether the recipient has articulated what could constitute a legitimate, non-retaliatory reason for taking the adverse action. If so, OCR then considers whether the reason asserted is a pretext for prohibited retaliation.

While OCR would need to address all of the above elements in order to find a violation, OCR need not address all of these elements in order to find insufficient evidence of a violation where the evidence otherwise demonstrates that retaliation cannot be established.

- **Analysis and Conclusion**

The evidence does not support that the Student was threatened at the xxxxxxxxxxxx, 2012, meeting with a student code-of-conduct action for having advocated for herself as a student with a disability, as alleged. The audio recording the Student made of the meeting demonstrated that the assistant vice president brought up the student code of conduct to underscore, for the Student's understanding, the potential problems associated with her using an assistant in such a manner as she had for the lithography course. The written summary issued to her after the meeting did not even mention any potential code-of-conduct violation, and no charge was ever actually brought against the Student. Therefore, the evidence does not support a conclusion that the University took an adverse action against the Student that would satisfy the third prong of the *prima facie* retaliation test. Accordingly, OCR need not consider the other elements of the *prima facie* case, and OCR finds that there is insufficient evidence that the University retaliated against the Student in violation of Section 504 and/or Title II, as alleged.

Resolution and Conclusion

To resolve the compliance findings, the University submitted the enclosed agreement on October 20, 2013. The agreement also resolves OCR's compliance findings from a second complaint separately investigated by OCR, OCR Docket #15-13-2011. This letter only addresses OCR's findings in the instant complaint, and OCR's findings in OCR Docket #15-13-2011 are addressed in a separate letter.

The agreement, as it relates to this complaint, requires the University to provide the Student with a complete, written list of the University-approved academic adjustments, written notice of any academic adjustments that the University had denied and why, and a written notice of the process to follow to request additional academic adjustments. The agreement also requires the University to, within 15 calendar days of the Student's reenrollment at the University and prior to the beginning of each semester that the Student is enrolled, provide a copy of the Student's University-approved academic-adjustment list to each professor/instructor teaching a course in which the Student is enrolled. Additionally, the agreement requires the University's ODS and any other appropriate University staff to, within 15 calendar days of the Student's reenrollment at the University, meet with the Student to discuss the Student's use of converted texts and to determine an effective manner in which the University will provide her with converted

texts, giving primary consideration to her requests. The University will provide the Student with any training necessary to ensure her ability to access the University-provided converted texts.

The agreement also requires the University to reimburse applicable present and past University students with disabilities for all of the administrative and late fees paid to the University for Technology Center services associated with academic adjustments that were approved by ODS. Reimbursed fees are to include those charged in the fall 2012, spring 2013, summer 2013, and, as applicable, the fall 2013 semester. The agreement further requires the University, beginning with the spring 2013 semester, to no longer charge students with disabilities administrative or late fees for Technology Center services that are ODS-approved academic adjustments. The agreement also requires the University to revise its policies and procedures, guidelines, webpage, and all other related materials to remove all reference to late and administrative fees for approved academic adjustments and to clarify that students are encouraged, but not required to, submit their schedules to the Technology Center in advance of each semester.

The agreement further requires the University to provide, in a timely manner, complete text conversion to students who are approved for converted texts by ODS. This shall include all text contained on each applicable page, cover pages, tables of contents, indexes, appendices, glossaries, bibliographies, and any other guiding material. The applicable pages shall be determined by consulting the course syllabus for that particular semester. Unless agreed upon in writing with the student, the University will provide complete text conversions for both “required” and “recommended” course readings, whether they are textbook sections, articles, or any other writing. The University will also require all faculty to submit documentation to the Technology Center so that ODS has sufficient lead time to evaluate the submissions and make timely conversions of the applicable texts.

The agreement also requires the University to continue to take steps to improve the accessibility for students with disabilities of its remedial math courses that use ALEKS® computer software. In doing so, the University is conducting a pilot program for the fall 2013 semester using different software. Following the pilot program, the agreement requires the University to choose one of the following three options for its remedial math courses:

1. work to develop and implement software for the computer-based courses that is compatible with assistive technology, including screen readers;
2. implement a different software for xxxxxxxx and any other courses that were using ALEKS®; and/or
3. cease offering the computer-based xxxxxxxx and any other computer-based remedial math courses until the software can be made accessible for students with vision and other disabilities requiring the use of assistive technology.

The agreement further requires the University to evaluate and consider the potential effect on students with disabilities prior to implementing new and emerging technologies (e.g., course software, distance learning, etc.) in its academic programs. The agreement requires the University to ensure that content is provided in an equally effective manner to all students, including those with visual and other print-related disabilities, particularly those students requiring assistive technology. Under the agreement, the University will require each college to submit documentation regarding any proposals to change academic programs and the steps taken to ensure accessibility for students with disabilities.

Furthermore, the agreement requires the University to revise its policies and procedures for its Student Handbook regarding the provision of academic adjustments and auxiliary aids and services for student with disabilities. The agreement also requires the District to train its faculty and relevant staff on the University's procedures for providing academic adjustments to students with disabilities. Furthermore, the agreement requires the University to provide notice to students, faculty and staff of the new policies and procedures.

OCR will monitor the implementation of the agreement. If the University does not fully implement the agreement, OCR will reopen the investigation and take appropriate action.

This concludes OCR's investigation of the complaint and 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.

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

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

We look forward to receiving the University's first monitoring report by December 31, 2013. The report should be directed to xxxxxxxxxx, who will be monitoring the University's implementation of the agreement. xxxxxxxx may be reached at xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx. If you have any questions about this letter or OCR's resolution of the case, please contact Traci Ext, Chief Attorney, at xxxxxxxxxxxxxxxxxxxxxxxx.

Sincerely,

/s/

Catherine D. Criswell
Director

Enclosure