



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION XV  
MICHIGAN  
OHIO

April 22, 2022

**Via E-mail Only to [ndecapri@kent.edu](mailto:ndecapri@kent.edu)**

Nichole DeCaprio  
Associate Counsel  
Office of General Counsel  
Kent State University  
800 East Summit Street  
Kent, Ohio 44242

Re: OCR Docket No. 15-21-2136

Dear Ms. DeCaprio:

This letter is to notify you of the disposition of the above-referenced complaint filed on August 26, 2021, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Kent State University (the University) alleging that the University discriminated against the Complainant (the Student) based on disability. Specifically, the Complainant alleged that the University failed to implement XXXXX approved XXXXX XXXXX XXXXX modification accommodations for the XXXXX term.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of federal financial assistance from the Department of Education and as a public entity, the University is subject to these laws.

Based on the complaint allegations, OCR opened an investigation of the following legal issues:

- Whether the University on the basis of disability, excluded a qualified student with a disability from participation in, denied the student the benefits of, or otherwise subjected the student to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education aid, benefit, or service, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.43(a) and the regulation implementing Title II at 28 C.F.R. § 35.130.
- 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, on the basis of disability, against a qualified applicant or student, in

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violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44(a), and the Title II regulation at 28 C.F.R. § 35.130(b)(7)(i).

During its investigation to date, OCR reviewed information provided by the Complainant and the University and interviewed the Complainant and University staff. Based on this information, OCR determined that there is a cause for concern that the University violated Section 504 and Title II with respect to the complaint allegations. However, prior to the completion of OCR's investigation, the University signed the attached resolution agreement, which, once implemented, will address the compliance concerns OCR identified. A summary of OCR's investigation to date and the bases for its determination are provided below.

### **Information Provided by the Complainant**

During the XXXXX academic year, the Complainant was a XXXXX at the University majoring in XXXXXXXX. She informed OCR that prior to XXXXX XXXXX year, she was diagnosed with XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. On XXXXX, she submitted an application with the University's Student Accessibility Services (SAS) office indicating that she had symptoms which included XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. XXXXX requested disability-related accommodations for the XXXXX XXXXX semester, including XXXXX XXXXX XXXXX modifications. XXXXX doctor filled out paperwork for XXXXX to submit to the University, and the Complainant stated that she received a letter from the University in XXXXX XXXXX that XXXXX accommodations were approved. However, on XXXXX, SAS informed the Complainant that she would not receive XXXXX approved XXXXX XXXXX XXXXX modifications for XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX class because XXXXX requested accommodations interfered with the essential nature of the course. The Complainant said XXXXX was confused as to who ultimately denied XXXXX accommodations for XXXXX XXXXX XXXXX because XXXXX professor said that SAS made the decision whereas SAS said that XXXXX professor made the decision.

On XXXXX, the Complainant filed a grievance with the SAS Dean challenging the denial of XXXXX accommodations. The Dean upheld the decision to deny XXXXX accommodations in the XXXXX XXXXX XXXXX class but encouraged the Complainant to directly contact XXXXX professor and inquire if XXXXX professor could offer some flexibility with XXXXX XXXXX XXXXX.

According to the Complainant, XXXXX professor told XXXXX to switch to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX. The Complainant declined this offer because it conflicted with XXXXX XXXXX class. The Complainant told XXXXX professor about this conflict and later received an email from another member of the SAS office presenting XXXXX with another option that would allow XXXXX to XXXXX XXX XXX XXXX of the class, which were taught by different instructors. The Complainant said XXXXX declined that offer because it would have been impossible for XXXXX and sounded more complicated than the accommodations XXXXX requested. Documentation provided by the University shows that the University offered XXXXX this hybrid option on XXXXX. According to the University's website, XXXXX classes started on XXXXX. The Complainant said XXXXX was granted

XXXXXX requested accommodations for XXXXXX other in-person class, XXXXXX, for the XXXXXX XXXXXX semester without issue.

When OCR staff questioned the Complainant about whether the activities completed in XXXXXX XXXXXX XXXXXX class could have been completed remotely, the Complainant said the only thing XXXXXX could not have done at home was check XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX. The Complainant stated that XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX would demonstrate some XXXXXXXXXXXX in class, but most days the professor would simply cover XXXXXXXXXXXXXXXXXXXX, which the class already had access to, or review power points.

The Complainant stated that XXXXXX ultimately attended the in-person XXXXXX XXXXXX XXXXXX class. XXXXXX stated that on two occasions during the semester, both in XXXXXX XXXXXX, XXXXXX asked XXXXXX professor for XXXXXX XXXXXX XXXXXX XXXXXX modifications. The Complainant said that XXXXXX professor granted both of XXXXXX requests without issue. The Complainant stated that XXXXXX professor also allowed XXXXXX to XXXXXX XXXXXX XXXXXX XXXXXX XXXXXX. The Complainant said that XXXXXX professor never denied any of XXXXXX specific requests for XXXXXX XXXXXX XXXXXX modifications, but the Complainant knew that the professor gave other people some problems with requests, so XXXXXX did not ask for modifications when XXXXXX needed them because XXXXXX did not want the confrontation. Specifically, the Complainant said that XXXXXX did not ask to miss class when XXXXXX experienced XXXXXX XXXXXX because the professor had already given XXXXXX XXXXXX XXXXXX in XXXXXX and the Complainant was worried any XXXXXX XXXXXXXXXXXX would be denied or counted against XXXXXX grade.

### **Information Provided by the University**

Documentation provided by the University confirms that the Complainant filled out an SAS application requesting disability-related XXXXXX XXXX XXXXXXXX in XXXXXX XXXXXX. The University's documents also reflect SAS approved these accommodations on XXXXXX, and the Complainant was sent an email on XXXXXX, listing XXXXXX accommodations and informing XXXXXX of how to notify XXXXXX professors about XXXXXX accommodations.

On XXXXXX, SAS sent a notice to the Complainant's instructors regarding the Complainant's accommodations. While the notice sent to the Complainant on XXXXXX, and the University's internal records made it appear that XXXXXX accommodations had been approved, the notice to the instructors stated in relevant part:

If the accommodations listed here do not align with your course requirements or could alter your course objectives, please contact SAS to discuss further options. With your input and after a review of course objectives, SAS will determine if accommodations are reasonable for this class.

On XXXXXX, the XXXXXX XXXXXX XXXXXX professor emailed the associate director of SAS and expressed concerns about granting the Complainant XXXXXX XXXXXX XXXXXX modifications while achieving the course objectives. XXXXXX stated that XXXXXX had concerns regarding the open ended nature of the accommodations and stated, in relevant part:

To provide more context, I will share a bit more about the class. It is XXXXX XXXXX XXXXX XXXXX, conducted in a classroom with XXXXX XXXXX XXXXX and XXXXX XXXX. Most students do not have this available at home; therefore, significant missed classes would make it difficult to complete work in a timely manner.

The class is project-based to develop students XXXXX [sic] XXXXXXXX and XXXXXXXX skills. These projects range from one week to several weeks long, developing ideas from XXXXXXXX to XXXXXXXXXXXXXXXXXXXX. It is important to complete these in order to develop skills. Feedback from the instructor and the student's peers during their project development is also an important part of the process. Additionally, these projects cannot be rushed through at the end of the semester, so I cannot push due dates too far back or it will be impossible for the student to complete the work by the end of the semester.

On XXXXX, the associate director of the SAS responded stating: "It was determined in a previous semester that the XXXXX XXXXX XXXXX modifications are not appropriate for this class. [The Complainant] is on my list of students to contact regarding this..."

Later that same day, the associate director of SAS sent the Complainant an email denying XXXXX accommodations request. The email provided in relevant part as follows:

I'm following up with you about your request to use the XXXXX XXXXX XXXXX modifications in XXXXX XXXXX XXXXX XXXXX. As you know from the XXXXX XXXXX XXXXX modification policies, SAS accommodations cannot infringe on the essential nature of the course. Your instructor must be able to assess the stated learning outcomes of the course. After reviewing the course learning outcomes and other course materials, SAS has determined that these accommodations would alter the essential nature of the course.

The email went on to state that the Complainant's next step would be to meet with XXXXX instructor to determine if there is any flexibility around XXXXX XXXXX XXXXX or if the instructor had any suggestions on alternative ways to assist her.

OCR noted that, also on XXXXX, the SAS associate director notified the Complainant via email that XXXXX would not receive XXXXX requested XXXXX XXXXX XXXXX modifications in XXXXX XXXXX XXXXX XXXXX course, stating that the accommodations would infringe on the essential nature of the course. However, the instructor for the course was copied on the email, and XXXXX responded on XXXXX, asking what the decision was based on, as XXXXX had not yet submitted course materials for the class. On XXXXX, the SAS associate director responded: "We worked with the course coordinator regarding the stated learning outcomes and requirements for this course in a previous semester."

In a series of subsequent emails between the course instructor and the SAS associate director, the instructor stated that there was no XXXXX requirement for XXXXX class, and that XXXXX XXXXX would not be a problem.

Students should be aware that this accommodation may not be reasonable in all courses. Course requirements vary widely due to course structure and deadline extensions may not be appropriate due to the learning outcomes of the assignment and/or course. **SAS, in consultation with the course instructor and other relevant academic parties, will determine if meeting deadlines is an essential element of the course by considering the course description, syllabus, grading**

**methodology, external licensure requirements, the impact on the educational experience of the entire class, and other factors. [Emphasis added]**

Like the XXXXX procedure above, the XXXXX modification procedure requires course instructors to notify SAS within seven days of receiving a student accommodations letter to discuss any concerns about the appropriateness of this accommodation in their course.

OCR spoke with the Director of SAS regarding the University's process for granting or denying disability-related accommodations. She stated that the disability accommodation process begins when a student submits a request for accommodations, along with their relevant documentation, through the University's Access KSU online system. After SAS receives a request, they may ask the student for more information and then determine which accommodations to grant. The approved accommodations are stored in the Access KSU system and faculty are notified about the accommodations. After professors receive notice of the accommodations, they have seven business days to contact SAS about any concerns they have with the approved accommodations. If the professors take no action, the accommodation goes into effect. However, if a professor has concerns about an accommodation, they can contact SAS to discuss their concerns. When contacted by a professor about issues with an approved accommodation, SAS will review the class syllabus and ultimately make the determination as to whether an accommodation will or will not be granted. She stated that sometimes a department chair or coordinator may be included in the conversation. She stated that ultimately, SAS determines whether to provide an accommodation and notifies the student.

The SAS Director stated that courses with multiple sections generally receive the same accommodations because the learning outcomes of the course are the same for all sections of the class. The SAS Director also stated that a course's learning objectives help determine whether an accommodation will be approved. The SAS Director stated that there are times when SAS disagrees with professors about whether a requested accommodation will alter the fundamental nature of the course.

With respect to the Complainant's requested XXXXX XXXXX XXXXX XXXXX accommodations for XXXXX XXXXX XXXXX, the SAS Director said that SAS denied the accommodations because they would alter the essential nature of the course.

The SAS Director said that the course is classified as a XXXXXX and that in conversation with the professor for the course, she learned that students receive grades based on their completed work projects. Additionally, she said the course requires specific XXXXXXXXXXXX and XXXXXXXXXXXX, which the professor demonstrates how to use during class time. The SAS Director stated there are often XXXXX XXXXX circumstances with the class, for example a XXXXXXXXXXXXXXXXXXXX class or the professor XXXXXXXXXXXXXXXXXXXX which cannot be replicated and, therefore, students must be present so that the professor can see them learn and accurately judge whether a student meets learning outcomes.

The SAS Director said these same considerations applied to the XXXXXX section of the class because the XXXXXX section of the class also met at set times and if a student XXXXX XXXXX, the professor could not monitor his or XXXXX progress and provide feedback. The SAS Director stated that the XXXXX section of the class would likely be a good fit for students

whose disabilities impacted their ability to physically get to class. Additionally, the SAS Director stated that learning outcomes are the same for the XXXXX XXX XXXXXX sections of the XXXXX XXXXX XXXXX class but the way the professor measures the learning outcomes may change. The SAS Director was not aware of whether XXXXX XXXXX XXXXX modification accommodations have ever been granted for XXXXX XXXXX XXXXX. The Complainant's professor and the XXXXX XXXXX Program Lead informed OCR that they did not know of any instance where SAS approved XXXXX XXXXX XXXXX modifications as accommodations for XXXXX XXXXX XXXXX.

Finally, the SAS Director stated that when accommodations for a specific class are denied, students are encouraged to reach out directly to their professors and ask whether the professors can provide any flexibility. SAS also referred students to their academic advisor to determine available options to take other courses.

The Complainant's professor told OCR that XXXXX XXXXX XXXXX XXXXX were essential to XXXXX XXXXX XXXXX to ensure that students did not fall behind. The XXXXX XXXXX Program Lead also stated that XXXXXXXX were important to XXXXX XXXXX XXXXX based on in-class critiques. The Complainant's professor stated that the course is built on cumulative projects and it is very difficult for a student to catch up once he or she falls behind. Additionally, the professor stated that in-person instruction on XXXXXXXXXXXXXXXXXXXXXXXX demonstrations are hard to recreate in a XXXXX environment.

The Complainant's professor stated that the biggest difference between the XXXXX and XXXXXXXX sections of XXXXX XXXXX XXXXX is the XXXXXXXXXXXXXXXXXXXXX used; in-person uses XXXXXXXXXXXXX XXXXXXXXXXX while the XXXXXXXX section was modified to rely on XXXXX XXXXXXXXXXXXX.

The Professor said there was no time during the semester when the Student asked for an XXXXX XXXXX XXXXX modification that she could not accommodate.

OCR conducted a follow up interview with the Complainant. XXXXX disputed the reasons the University gave for asserting that XXXXX requested accommodations would have fundamentally altered the XXXXX XXXXX XXXXX course. XXXXX stated that there were XXXXXXXX XXXXX XXXXXXXXXXX in the class, but that students were not required to complete any assignments on the XXXXXXXX XXXXXXXXXXX, and that XXXXX had a XXXXXXX at home that could largely do the same things. XXXXX stated that there were no assignments that XXXXX was required to complete in class. XXXXX stated that sometimes the students would have to XXXXXXXXXXXXXXXXXXXXXXXX but was it. XXXXX stated that there were no XXXXXXX brought into the class. The Complainant stated that the professor would demo XXXXX and talk about projects on some days, but it was mostly XXXXX going over the project sheet the students already had. XXXXX stated that XXXXX could have always looked at power points the professor covered after the fact.

## **Legal Standard**

The Section 504 implementing regulation at 34 C.F.R. §104.4(b)(1)(ii) prohibits recipients 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. Similarly, the Title II regulation, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability. Under both Section 504 and Title II, however, 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 disabled students, 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).

Pursuant to OCR's interpretation of the above-referenced regulations, once a postsecondary institution receives documentation of a student's disability and a request for services, the institution and the student should work together in an interactive process to identify appropriate academic adjustments in light of the Student's disability and individual needs. Students can be required to know about and follow reasonable procedures when requesting academic adjustments.

With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give 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. OCR has stated that an appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. 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.

OCR has found violations of Section 504 and Title II where professors were allowed by a college to unilaterally deny academic adjustments that had been approved by the college's disability services office. While it reasonably might be expected that a course professor would be included in the process of determining what requirements are essential to participation, allowing an individual professor to have ultimate decision-making authority is not in keeping with the diligent, well-reasoned, collaborative process that warrants accord of deference by OCR to the judgments of academic institutions.

### **Voluntary Resolution**

In this case, OCR has cause for concern that the University did not comply with the requirements of Section 504 and Title II when it denied the Complainant's request for XXXXX XXXXX XXXXX XXXXX for assignments in XXXXX XXXXX XXXXX XXXXX course on the basis that such modifications constituted a fundamental alteration of the course.

The evidence shows that the Complainant made the accommodation request in XXXXX, well before XXXXX semester classes began, and was provided a letter from the University that appeared to show, and which the Complainant believed, meant XXXXX accommodations had been approved.

However, on XXXXX, the University notified the Complainant's professors of the Complainant's requested accommodations, and the professor in the Complainant's XXXXX XXXXX XXXXX course responded the same day and raised concerns about those accommodations in light of the nature of the course. Less than 24 hours later, SAS notified the Complainant that XXXXX would not receive XXXXX requested XXXXX XXXXX XXXXX modifications in the course because they would alter the essential nature of the course.

The University's procedures state that a decision regarding whether a request for XXXXX XXXXX XXXXX modifications constitutes a fundamental alteration would be based on a consultation between the SAS, the course instructor, and other relevant parties, and that the group would consider the course description, syllabus, grading methodology, external licensure requirements, the impact on the educational experience of the entire class, and other factors in making this determination. However, the evidence does not support that the University engaged in such a deliberative process with respect to the Complainant's request for accommodations in XXXXX XXXXX XXXXX XXXXX course, as the denial came less than 24 hours after the professor raised XXXXX concerns, and the SAS director informed the professor via email that a decision had been made in a prior semester that such accommodations would not be granted in XXXXX XXXXX XXXXX. Further, when questioned about how such matters were handled, the SAS Director did not describe a deliberative process, but rather stated that if a professor raised a concern, the SAS would review the class syllabus and decide whether an accommodation would be granted. She stated that "sometimes" a department chair or coordinator would be consulted.

Further, while the Complainant's XXXXX XXXXX XXXXX course was not the subject of this complaint, OCR noted that the University denied the Complainant XXXXX XXXXX XXXXX XXXXX modifications in that course stating that they would alter the essential nature of the course without consulting with the professor, who after learning of the denial, informed the University that XXXXX course did not have any XXXXX requirements and making XXXXX adjustments for the Complainant would not be a problem.

While the University did work with the Complainant to find alternatives in XXXXX XXXXX XXXXX XXXXX XXXXX course, including attending a XXXXX XX XXXXXXXX version of the course, these options did not work with the Complainant's schedule, and did not address XXXXX need to XXXXX XXXXX XXXXX due to XXXXX XXXXXXXX and have XXXXX XXXXX. Thus, the Complainant attended the XX XXXXXXXX class without accommodations.

Based on the foregoing, the evidence obtained to date raises a cause for concern that the University denied the Complainant's request for accommodations on the basis that they would fundamentally alter XXXXX XXXXX XXXXX XXXXX course, without an appropriate, reasoned deliberation by relevant officials that considered XXXXX specific requests, disability and the nature of the courses and without a diligent assessment of available options, as required by Section 504 and Title II.

OCR also noted that the evidence OCR obtained to date does not support that the Complainant's requested XXXXX XXXXX XXXXX modifications would have constituted a fundamental alteration of the XXXXX XXXXX XXXXX course. Interviews with University staff demonstrated that XXXXX XXXXX XXXXX XXXXX were helpful in measuring a student's progress; however, the main concern with the Complainant's requested accommodations appeared to be that the Complainant would fall behind if they were granted. Additionally, the professor ultimately provided the Complainant with XXXXX XXXXX XXXXX modifications in the course without issue, which supports that providing such accommodations did not fundamentally alter the course.

OCR also has concern that the University's accommodation procedures, including its XXXXX Modification Accommodation Policy and Procedure, and its XXXXX Modification Accommodation Policy and Procedure, suggest that such accommodations are predetermined and limited, as opposed to deciding on a case-by-case basis considering each student's individual requests and needs. For example, the XXXXX Modification Policy states that it offers a "slight" amount of flexibility around course XXXXXXXXXXXXXXXXXXXXXXXX in to address "brief, periodic disability-related experience" and that XXXXXXXXXXXXXXXXXXXXXXXX are "specific to lengthy or complex individual assignments" and are typically 24-72 hours in length. However, accommodations not fitting these parameters, e.g., XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, might be an appropriate depending on a particular student's disability-related needs.

Based on the foregoing, there is cause for concern that the University violated Section 504 and Title II with respect to its handling of the Complainant's accommodations in XXXXX XXXXX XXXXX XXXXX course.

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the University expressed an interest in resolving the allegations prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On April 21, 2022, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

## **Conclusion**

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 individual may file another complaint alleging such treatment.

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

OCR looks forward to receiving the University's first monitoring report by **June 1, 2022**. For questions about implementation of the Agreement, please contact XXXXX. She will be overseeing the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667, or by e-mail at [brenda.redmond@ed.gov](mailto:brenda.redmond@ed.gov).

Sincerely,

/s/

Brenda Redmond  
Supervisory Attorney/Team Leader

Enclosure