

**U.S. DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
CHICAGO OFFICE**
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Chicago, IL 60661
FAX #312-730-1704

ADMINISTRATIVE COMPLAINT

COMPLAINANT

Brandi Kostal
c/o B. Lane Hasler
1530 South State Street
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Chicago, IL 60605

Brandi Kostal (“Brandi”) is currently a student at Logan University, Inc. d/b/a Logan College of Chiropractic a/d/b/a Logan College of Chiropractic/University Programs (“Logan”). She has been enrolled since August 2010, has completed her third year in the graduate chiropractic program, and is scheduled to graduate in April 2014 with a doctorate in Chiropractic. Additionally, she is also enrolled in the masters degree program and intends to obtain a masters in Nutrition and Human Performance also in April 2014. During the spring semester of 2013, Brandi experienced pregnancy discrimination when Logan refused to excuse absences related to pregnancy and childbirth and would not allow her to make up work she missed due to such absences.

COMPLAINANT’S COUNSEL

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RECIPIENT

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RECIPIENT’S COUNSEL

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Attn: Laura L. McLaughlin
General Counsel

PRELIMINARY STATEMENT

1. This Complaint is filed by Brandi pursuant to Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.* (“Title IX”), and the regulations and policies promulgated thereunder. *See* 34 C.F.R. § 106 *et seq.* Title IX prohibits discrimination on the basis of sex, including pregnancy discrimination, in federally funded education programs and activities.

2. Logan maintains an attendance policy that permits pregnancy discrimination and in practice allows students to be penalized for pregnancy-related absences, in violation of Title IX.

3. As detailed in the Factual and Legal Allegations below, during the Spring Semester 2013 Brandi was subjected to pregnancy discrimination (1) when Logan refused to excuse her pregnancy-related absences, forcing her to return to school before fully recovering from a high risk pregnancy and emergency Caesarean section; (2) when Logan refused to give her “incompletes” in two courses so she could make up the midterm and final exams in those courses, and ultimately gave her two failing grades in those courses; and (3) when Logan administrators failed to investigate when Brandi raised Title IX concerns and denied Brandi’s appeal regarding her failing grades .

4. Additionally, to our knowledge, Logan has not adopted or published a grievance procedure for the investigation and resolution of Title IX complaints, including complaints of discrimination based on pregnancy or parental status, and has not designated a Title IX Coordinator.

5. In order to address this situation, Brandi requests that the Chicago Office for Civil Rights (“OCR”) investigate Logan to determine whether it is meeting its obligations under Title IX and take all necessary steps to remedy any unlawful conduct.

JURISDICTION

6. OCR is responsible for ensuring compliance with Title IX and receiving information about, investigating, and remedying violations of Title IX and its implementing regulations and guidelines. 34 C.F.R. §§ 106.71, 100.7.

7. The complaint is timely. Brandi was forced to return to her doctorate classes before her recovery from childbirth on March 27, 2013, and on or about April 25, 2013, Brandi was given failing grades in her two masters level classes.

8. Brandi files this complaint on July 30, 2013, less than 180 days from these violations of Title IX.

9. In any case, because Logan continues to maintain a policy that enables discrimination, this complaint is timely. Logan’s policy excusing only four types of absences, and its practice of refusing to excuse absences related to

pregnancy or allow for make-up work for pregnancy-related absences violates Title IX and its implementing regulations. 20 U.S.C. § 1681 et seq.; 34 C.F.R. §106.40(b)(5).

10. Logan receives federal financial assistance¹ and is therefore prohibited from discriminating on the basis of sex by Title IX.

FACTUAL ALLEGATIONS

Logan Has Policies That Violate Title IX

11. Logan's published attendance policy provides for the following four categories of excused absences only: (1) military service; (2) jury duty; (3) National Licensure Examination; and (4) off-site sanctioned events. All other absences are subject to a 15% maximum; any absences in excess of that "constitute the basis for a grade of Attendance Failure (AF)." A copy of this policy is attached as Exhibit A.

12. Logan does not maintain a formal leave policy for its students who are pregnant. Furthermore, Logan's Dean of Student Services informed Brandi in writing that pregnancy-related absences are not excused under the policy. *See* Exhibit H and paragraph 23 *infra*.

Brandi is a Student at Logan

13. Brandi has been enrolled full-time at Logan since August 2010, and she is now in her 8th trimester of study pursuing both doctorate and masters level degrees. Brandi has two trimesters remaining in her doctorate degree program and two trimesters remaining in her masters degree program.

Brandi's Pregnancy and Related Medical Conditions, and Logan's Treatment of Her in Violation of Title IX

14. During the Fall 2012 trimester, in September 2012, Brandi was 12 weeks pregnant and started hemorrhaging. She was diagnosed with a subchorionic hematoma, which essentially is a tear in the placenta's connection to the uterus that causes bleeding and threatens the pregnancy. Brandi continued to hemorrhage to varying degrees throughout that trimester of study, and at times the bleeding was extremely heavy. Nevertheless, Brandi continued to attend her classes. In a lab class Brandi was penalized for not changing into a gown, even though she had explained to her professor that she could not wear a gown because of the heavy bleeding. The same professor penalized Brandi that term for having to re-take an exam due to extremely heavy bleeding. The bleeding was so bad that Brandi had to leave during the exam to go to the emergency room. The Professor did not want to let Brandi re-take the exam, but Brandi reached out to the Vice President for Academic Affairs, Dr. Carl Saubert, who intervened and ensured that Brandi would

¹ *See, e.g.* <http://www.logan.edu/future-students/financial-aid>.

be allowed to re-take the exam. In a second class Brandi had that trimester with the same professor, Brandi had to miss both the scheduled practical exam and the make-up exam due to heavy bleeding, and before Brandi even re-took the exam, the professor told Brandi that she was going to dock Brandi's exam grade by 20% off the top because of the rescheduling. Brandi's exam grade was docked by 20%.

15. During the Spring 2013 trimester, which ran from January 15, 2013 through April 26, 2013, Brandi was still pregnant, due at the end of March. She was enrolled in 13 doctorate-level classes and 2 masters-level classes.

16. On March 4, 2013, Brandi learned of a dangerous complication to her pregnancy and was admitted to the high-risk obstetrical labor and triage unit at Barnes-Jewish Hospital in St. Louis Missouri. That evening, after she was evaluated and discharged, she emailed Dr. Michelle Davis, the professor for her two masters level courses, "Nutrition and Human Performance" and "Survey of Natural Therapies," told Dr. Davis of her hospitalization and discharge and requested more time to complete the midterms in those two courses, which had a deadline of March 10. A copy of this email is attached as Exhibit B.

17. On March 5, 2013, Dr. Davis responded to Brandi by email saying: "You and baby are most important so schedule that rest and let me know when you are ready to take the midterm and if I can help in any way." A copy of this email is attached as Exhibit C.

18. On March 15, 2013, Brandi underwent an emergency Caesarean section surgery and delivered her child. She sent an email to Dr. James Paine, Dean of Student Services, saying: "I am having an emergency c-section within the hour. Please see the document below. It will prevent attendance failure." Below was a link to a National Women's Law Center fact sheet on Title IX and the rights of pregnant students. A copy of this email is attached as Exhibit D.

19. On March 16, 2013, that same day, Brandi sent an email bcc'ing all of her doctorate class professors and notifying them of her emergency Caesarean section. A copy of this email is attached as Exhibit E.

20. Brandi also understood from Dr. Paine that he separately emailed some of Brandi's professors sometime between March 15, 2014 and March 26, 2013, informing them that Brandi had emergency surgery and delivered her baby. Brandi has never seen those emails.

21. On March 20, Brandi sent a separate email to Dr. Davis, making sure she knew about the surgery and asking her about assignment deadlines. The next day, Brandi received an email from Dr. Davis that said: "Thanks for letting me know and I hope everyone is ok! Just send me an email when you have completed the work and focus on recovering :)." A copy of these emails is attached as Exhibit F.

22. On March 26, Brandi emailed Dr. Paine to follow up and see whether he had reviewed the fact sheet about Title IX and pregnancy that she linked to in

her prior email, and relaying her increasing concerns about attendance failure. A copy of this email is attached as Exhibit G.

23. Later in the day on March 26, 2013, Brandi received an email from Dr. Paine, saying: “Please find the attendance policy attached. Unfortunately, child birth is not currently listed as an event for which attendance is excused. Please refer to page 76 of the Student Handbook (link attached) to review the policy.” A copy of this email is attached as Exhibit H.

24. Brandi wrote back to Dr. Paine that day, saying “My only question is that if a school receives federal funding, then title IX supercedes [sic] a school’s attendance policy. That was my question??” A copy of this email is attached as Exhibit I.

25. Based on Dr. Paine’s email stating that Logan would not excuse the absences, and based on Logan’s policy that does not treat pregnancy-related absences as excused, Brandi returned to school full-time on March 27, 2013, while still recovering from pregnancy and childbirth – including a complicated Caesarean section surgical delivery – in order to complete her doctorate-level coursework without penalty and not be either “attendance failed” or forced to withdraw.

26. Also on March 27, 2013, Brandi provided Logan with a letter from her physician, Dr. Methodius G. Tuuli, confirming the need for her to miss classes to recovery from surgery. A copy of this letter is attached as Exhibit J.

27. Returning to classes 11 days after having complicated Caesarean section surgery caused Brandi great hardship. For example, in order to be able to drive to school safely, Brandi had to stop taking her pain medications while suffering tremendous pain; at school she had to sit and/or stand all day without the proper rest or medication; she had to stop breastfeeding her daughter who was only 11 days old because of the long days she had to be away from home;. As a result of all of this and the accompanying stress, Brandi became extremely rundown both physically and mentally.

28. On April 23, 2013, Brandi received an email that Dr. Davis sent to the whole class, reminding them that it was the last day to complete the final exam. Brandi wrote back and asked Dr. Davis to submit an “I” (incomplete) in both courses so that she could take the midterm and final during the upcoming week. On April 25, 2013, Dr. Davis emailed Brandi saying that she made a request to the department and registrar on Brandi’s behalf because of her “qualifying extenuating circumstances” but that according to school policy Brandi did not qualify for an incomplete in either of her two masters level classes because she did not have “performance at a passing level.” A copy of these 3 emails is attached as Exhibit K.

29. Also on April 25, 2013, grades were issued and Brandi received failing grades in her two masters level courses with Dr. Davis. Before her hospitalization, Brandi had an “A” average in one of those classes and a “B” average in the other. Dr. Davis gave her zeros for the two midterm exams that she had not yet been able to make up because of pregnancy complications she experienced pre-delivery.

30. Later that day, Brandi sent an email to John Jaffry, the Registrar for Logan, asking him to reconsider denying her request for incompletes and expressing her willingness to finish the coursework within the upcoming week when she would be off school. In that email, Brandi explained her circumstances and explained that the only reason she did not have “performance at a passing level” was that she was given zeros on the midterms she was not permitted to make up; prior to that, she had an A in one of the masters classes and a B in the other. A copy of this email is attached as Exhibit L.

31. Mr. Jaffry wrote back saying he forwarded Brandi’s “email appeal” to Dr. Weiwen Chai, Chairperson of the Master’s Program in Nutrition and Human Performance, and that Brandi also could appeal to Dr. Carl Saubert, Logan’s Vice President of Academic Affairs, “who is also aware of your appeal”. A copy of this email is attached as Exhibit M. Brandi wrote back asking how to appeal to Dr. Saubert, and Mr. Jaffry replied with some more information. A copy of these emails is attached as Exhibit N.

32. Less than an hour later, Brandi emailed Dr. Saubert, explained her circumstances to him and reiterated her request that her grades be changed to “incompletes” so that she could finish the coursework the following week. A copy of this email is attached as Exhibit O.

33. On May 1, 2013, Brandi emailed Mr. Jaffry again, asking him whether he heard anything regarding her incomplete requests for the two MSN courses. A copy of this email is attached as Exhibit P.

34. Also on May 1, 2013, Brandi got an email from Dr. Chai, the Department chair, informing Brandi that “Professor Davis’ decision” would be upheld and her failing grades in the two masters courses sustained, because “[i]t is not in your and our program’s best interest to give you “incomplete” on these two courses.” A copy of this email is attached as Exhibit Q.

35. That afternoon, Brandi responded to Dr. Chai, identifying the inconsistencies between Dr. Davis’ email to Brandi and Dr. Chai’s email to Brandi (Dr. Davis said she tried to get Brandi incompletes but that according to school policy Brandi could not because she was not performing at a passing level, while Dr. Chai said “I fully support the decision made by Dr. Davis”) and explaining that Logan’s treatment of her violated Title IX. A copy of this email is attached as Exhibit R.

36. Dr. Chai responded right away by reaffirming that Logan would not change its position and that she did not feel it was in Brandi’s or the program’s best interest to allow Brandi to complete the two masters level courses. A copy of this email is attached as Exhibit S.

37. Brandi was never given an opportunity to complete the midterm or final exams in the two online masters level courses, and her grade remains an “F” in both of those classes. A copy of Brandi’s transcript is attached as Exhibit T.

Logan's Refusal to Address and Correct Discrimination

38. On May 6, 2013, Brandi, through her counsel B. Lane Hasler, sent a letter to Dr. Chai, Director of the masters Level Programs Nutrition and Human Performance regarding Title IX and Logan's treatment of Brandi, requesting the situation be remedied. A copy of this letter is attached as Exhibit U.

39. A few hours later, Dr. Chai responded to Brandi's counsel Mr. Hasler, saying that Mr. Hasler should expect a contact from the Vice President of Academic Affairs, Dr. Carl Saubert. A copy of this email is attached as Exhibit V.

40. Dr. Carl Saubert never contacted either Brandi or Mr. Hasler. Instead, on May 7, 2013, Logan's General Counsel, Laura L. McLaughlin, sent a letter to Brandi's counsel with several inaccurate statements and blaming Brandi for trying to complete her coursework instead of withdrawing from her courses. The letter states that "Logan was well aware of Ms. Kostal's upcoming "at-risk" delivery and advised her to take a lighter course load before the Trimester began," and goes on to say that "[Brandi] refused accommodations to withdraw her from her courses without penalty based on absences." A copy of this letter is attached as Exhibit W.

41. The only option offered by Logan was to drop all of her courses in the 10th – 12th week of a 14-week term, which is not much of an option at all. Ms. McLaughlin's letter says nothing about Brandi's Title IX allegations. *See* Exhibit W.

42. On May 15, 2013, Brandi's counsel responded to Ms. McLaughlin, denying the inaccurate statements in Ms. McLaughlin's May 7, 2013 letter, reiterating that Logan's actions violate Title IX, and again requesting that the adverse treatment be remedied. A copy of this letter is attached as Exhibit X.

43. On May 21, 2013, Brandi received an email from Dr. Paine, asking Brandi whether there are academic accommodations she needs or anticipates for the current academic term. This email went directly to Brandi and not Mr. Hasler even though Logan knew Brandi was represented by counsel. A copy of this email is attached as Exhibit Y.

44. Two days later, on May 23, 2013, Brandi responded to Dr. Paine by email and attached the letter her counsel sent to Logan identifying the specific actions requested to remedy the adverse treatment. A copy of this email is attached as Exhibit Z.

45. Neither Dr. Paine nor anyone else at Logan ever responded to Brandi's May 23 email. Neither Brandi nor her counsel has received any communications from Logan since Dr. Paine's email on May 21, 2013.

Ongoing Logan Mistreatment of Other Pregnant Students

46. Brandi is aware of at least two other Logan students who suffered

similar adverse treatment in the past due to pregnancy-related absences and one other Logan student who is currently suffering such adverse treatment.

Logan's Additional Ongoing Violations of Title IX Requirements

47. To our knowledge, Logan has not adopted or published a grievance procedure for students to file Title IX complaints, including complaints of discrimination based on pregnancy or parental status. There is no procedure in place of which students have been made aware for the investigation and evaluation of complaints or their prompt and equitable resolution.

48. During the March and April 2013 time period that Brandi was attempting to have Logan address its violations of Title IX, Logan did not have an employee designated to coordinate Logan's efforts to comply with and carry out its responsibilities under Title IX. As of the date of this complaint, a search of Logan's website does not reveal the name, office address or telephone number of Logan's Title IX Coordinator.

The Discrimination's Impact on Brandi and Costs

49. The stress from the discrimination took a toll on Brandi. She suffered significant physical and emotional pain as a result of having to return to coursework after only 11 days recovery following her emergency cesarean delivery. The physical trauma of such surgery called for a recovery period through May 10, 2013 according to Brandi's doctor, but Logan would not permit it. She became rundown physically and mentally. Because of the long days she had to spend away from home when she returned to school, Brandi also had to stop breastfeeding when her daughter was only 11 days old, which has health implications for both Brandi and her baby.

50. Brandi received a grade of "F" in the following two masters level courses because of absences due to her pregnancy and delivery complications: (1) Nutrition and Human Performance; and (2) Survey of Natural Therapies.

51. Brandi's plans for post-graduate work are adversely impacted by the two failing grades in the masters level classes. She plans to attend a PhD program in Fall 2014, which depends on her graduating on time (Spring 2014) with her doctorate and masters Degrees. The two failing grades in the masters level courses will make it impossible for her to do that.

52. Brandi has lost \$2,700 in tuition and \$300 in books she bought for the masters level courses, and she has incurred legal fees in her efforts to resolve the situation.

LEGAL ALLEGATIONS

53. As outlined in the Factual Allegations above, Logan failed to comply with Title IX and its implementing regulations regarding pregnant and parenting students.

54. Title IX provides in relevant part that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

20 U.S.C. § 1681(a).

55. Title IX's implementing regulations make clear that,

“[i]n the case of a recipient which does not maintain a leave policy for its students . . . a recipient shall treat pregnancy . . . as a justification for a leave of absence for so long a period as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.”

34 C.F.R. § 106.40(b)(5).

The regulations further provide other requirements to ensure the equitable treatment of pregnant and parenting students.

56. On June 25, 2013, the Department of Education issued updated guidance for schools regarding the application of Title IX to pregnant and parenting students in the form of a Dear Colleague Letter (available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201306-title-ix.pdf>) and accompanying Pamphlet² explaining the regulations and answering Frequently Asked questions regarding their interpretation (the “PPS Guidance”). Although the PPS Guidance focuses on secondary schools, it explicitly states that “the underlying legal principles apply to all recipients of federal financial assistance, including postsecondary institutions.” PPS Guidance, at 2.

57. The PPS Guidance instructs:

- a. “Title IX requires a school to excuse a student's absences due to pregnancy or related conditions, including recovery from childbirth, for as long as the student's doctor deems the absences to be medically necessary. When the student returns to school, she must be reinstated to the status she held when the leave began, which should include giving her the opportunity to make up any work missed. A school may offer the student alternatives to making up missed work, such as retaking a semester, taking part in an online course credit recovery program, or allowing the

² See U.S. Dep't of Educ. Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students Under Title IX of the Education Amendments of 1972* (June 2013), available at <http://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf>.

student additional time in a program to continue at the same pace and finish at a later date, especially after longer periods of leave. *The student should be allowed to choose how to make up the work.* PPS Guidance, at 10 [emphasis added].

- b. In response to the Frequently Asked Question, “What if some teachers at a school have their own policies about class attendance and make-up work?” the Guidance states: “Schools must ensure that the policies and practices of individual teachers do not discriminate against pregnant students. For example, a teacher may not refuse to allow a student to submit work after a deadline that she missed because of absences due to pregnancy or childbirth. Additionally, if a teacher’s grading is based in part on class attendance or participation, the student should be allowed to earn the credits she missed so that she can be reinstated to the status she had before the leave. Schools should ensure that their teachers and staff are aware of and follow Title IX requirements.” PPS Guidance, at 11.
- c. “To ensure a pregnant student’s access to its educational program, when necessary, a school must make adjustments to the regular program that are reasonable and responsive to the student’s temporary pregnancy status.” PPS Guidance, at 9.

58. Logan violated Title IX’s prohibition against pregnancy discrimination by:

- a. maintaining a policy that allows pregnancy-related absences to be treated as unexcused and allows individual professors to set rules regarding leave and make-up work that penalize students for such absences, without any regard for federal civil rights laws; and
- b. refusing to address the impact that Logan’s hands-off leave and make-up policy had in Brandi’s case, which allowed her professors to maintain a rule that would fail to treat her absences as excused or reinstate her to the status which she held when the leave began.

34 C.F.R. § 106.40(b)(5).

59. Title IX also prohibits retaliation against those who complain of sex discrimination. *See Jackson v. Birmingham Bd. of Educ.*, 200 U.S. 321 (2005) (holding Title IX’s private right of action encompasses claims of retaliation against an individual because he complained of sex discrimination). Thus, as part of a school’s Title IX obligations, it must take steps to prevent any retaliation against the student who made the complaint. In April of this year, the Department of Education’s Office for Civil Rights issued guidance to remind schools that retaliation is a violation of Federal law. *See* U.S. Department of Education, Office for Civil Rights Dear Colleague Letter of April 24, 2013 (*available at* <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201304.pdf>.) OCR has determined that failing to respond to a complaint of sex discrimination can

constitute retaliation. *See* Medical College of Georgia, No. 04-10-2053 (July 29, 2010).

60. Logan also violated Title IX by retaliating against Brandi for complaining about the school's absence policy as applied to pregnancy-related conditions when it gave her failing grades in some of her classes, failed to investigate or otherwise address her discrimination claim, and continued – even after she complained of a Title IX violation – to deny her requests to allow her to make up the exams she missed in her masters level courses.

RELIEF REQUESTED

61. Brandi respectfully requests that OCR:
- a. Investigate Logan to determine whether it is allowing discrimination on the basis of sex under its education program. *See* 42 U.S.C. § 1681(a).
 - b. Take all necessary steps to remedy any unlawful conduct identified in its investigation or otherwise on the part of Logan, as required by Title IX and its implementing regulations. 34 C.F.R. § 106.3(a).
 - c. Secure an assurance of compliance with Title IX from Logan if any violations are found, as well as full remedies for the violations found. *See* U.S. Department of Education, Office for Civil Rights, OCR Case Processing Manual § 304 (Jan. 2010), *available at*: <http://www.ed.gov/> (setting forth guidelines for resolution agreements).
 - d. Require Logan to commit, moving forward, to adopt a policy regarding its obligations to pregnant and parenting students that would bring Logan into compliance with Title IX, and train faculty members, counselors and administrative staff accordingly.
 - e. Monitor any resulting agreements with Logan to ensure that compliance with Title IX is achieved.
 - f. Require Logan to remove from Brandi's transcript and record the two "F" grades she received and allow Brandi to complete both Master's level class at no additional cost.
 - g. Require Logan to reimburse Brandi for the quantifiable costs she has had to bear as a result of Logan's discriminatory treatment. The two masters level courses that Brandi was not allowed to complete post-recovery, together with the books for those courses, cost approximately \$3,000. Going forward, if Brandi is not given the opportunity to complete those two

courses for full credit, if the two failing grades are not removed from her transcript, and/or if she does not graduate on time in Spring 2014 with both doctorate and masters degrees, the costs to Brandi will be far higher as any of the above would derail Brandi's plans to obtain her PhD beginning in August 2014.

- f. Finally, Brandi has incurred legal fees in an effort to resolve this matter. Counsel B. Lane Hasler, has been representing Brandi since April 2013 and has spent a significant amount of time working on this matter. Co-counsel the National Women's Law Center is a non-profit organization that has taken on representation of Brandi *pro bono* and has spent a significant amount of time working on this matter. Both Mr. Hasler and the National Women's Law Center have complete documentation of their time spent and expenses, and will make them available to OCR upon request.

Respectfully submitted,

[signature on file]

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