

January 15, 2015

Dr. Robert J. Jones
President
University at Albany, State University of New York
University Hall 302
1400 Washington Avenue
Albany, New York 12222

Re: Case No. 02-14-2402
University at Albany, State University of New York

Dear Dr. Jones:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the University at Albany, State University of New York (the University). The complainant alleged that the University's visitor parking policy discriminates against individuals with disabilities by requiring them to have an additional parking permit that may only be obtained in person (Allegation 1). The complainant also alleged that the parking lots serving the University Administration Building (UAB) are not accessible to individuals with disabilities because these do not provide a sufficient number of parking spaces that are near the entrance to the UAB (Allegation 2).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving 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 (the ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The University is a recipient of financial assistance from the Department and is a public postsecondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and University staff, and reviewed information the complainant and the University submitted. OCR also conducted an onsite inspection of the parking facilities serving the UAB. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the University's visitor parking policy (the Policy) discriminates against individuals with disabilities by requiring them to have an additional parking permit that may only be obtained in person. At the time the complaint was filed, the University's Policy provided that prior to parking in a designated accessible space, disabled visitors were required to visit the Office of Parking and Mass Transit to obtain a temporary decal. The Policy further provided that vehicles parked in designated accessible spaces that did not have a valid University disabled decal would be subject to ticketing. During the course of OCR's investigation, the University revised the Policy.¹ The revised Policy directs disabled visitors to use the designated accessible spots in the various visitors' parking lots on campus, including the UAB. The revised Policy further states that disabled visitors do not require a University parking permit to park in designated accessible visitors' parking spaces.

OCR further determined that the University either had not issued or had expunged any parking tickets resulting from a violation of the old Policy. Therefore, OCR determined that the complainant's allegation that the University's Policy discriminates against individuals with disabilities by requiring them to have an additional parking permit that may only be obtained in person has been resolved by the University's revisions to the Policy. Accordingly, OCR will take no further action with respect to the Allegation 1.

With respect to Allegation 2, the complainant alleged that the parking lots serving the UAB are not accessible to individuals with disabilities because these do not provide a sufficient number of parking spaces that are near the entrance to the UAB. The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that [n]o qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies. The ADA includes a similar requirement for public entities at 38 C.F.R. § 35.149.

The UAB is served by four parking facilities designated for faculty/staff, students and visitors. The UAB shares the parking facilities with the Management Services Center (MSC) building, which is located across from the UAB. The University has located all accessible parking spaces in front of the UAB or adjacent to the MSC.² OCR determined that one of the UAB parking facilities was altered in 2014. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The University informed OCR that it adhered to the 2010 ADA Standards with regard to the UAB parking facilities.

¹ The revised Policy URL address is: www.albany.edu/pmts/meters_guests_visitors_conferences.php.

² Pursuant to Section 208.3.1 of the 2010 ADA Standards for Accessible Design, accessible parking spaces may be located in different parking lots if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance. OCR determined that the accessible parking spaces in front of the UAB and to the side of the MSC building provided greater accessibility in terms of distance from the accessible entrance to the UAB.

The UAB visitor parking facilities contain 25 spaces, seven of which are located directly in front of the UAB, and 18 of which are located adjacent to the MSC building. The 2010 ADA Standards require one accessible space for 25 spaces. OCR determined that the University has designated three accessible parking spaces for visitors; two of the accessible visitor parking spaces are located in front of the UAB, and one of the accessible visitor parking spaces is located along the side of the MSC building. Accordingly, OCR determined that the UAB visitor parking facilities have more than the required number of accessible parking spaces.

The UAB has separate parking facilities for faculty/staff and students; however, the University has designated accessible parking spaces for use by either faculty/staff or students. The University designated four accessible parking spaces at the front entrance of the UAB, and four accessible parking spaces along the side of the MSC building across from the UAB, for use by faculty/staff or students. The UAB faculty/staff parking facilities contain a total of 251 parking spaces. Based upon the number of spaces provided in the faculty/staff parking facilities, the 2010 ADA Standards require that seven of the spaces be accessible [See 208.2]. The UAB student parking facility contains 59 parking spaces. Based upon the number of spaces provided in the student parking facilities, the 2010 ADA Standards require that three of the spaces be accessible. Therefore, if the accessible parking spaces are available for faculty/staff and students, a total of ten accessible spaces are required. OCR determined that the University had eight designated accessible parking spaces for faculty/staff and students. Accordingly, the University did not have a sufficient number of accessible parking spaces for faculty/staff and students.

The 2010 ADA Standards require that accessible parking spaces be at least 96 inches wide minimum, and access aisles adjacent to accessible spaces be 60 inches wide minimum, as measured from the centerline of the marked lines. OCR determined that each of the accessible spaces and the access aisles were sufficiently wide. The 2010 ADA Standards require that accessible parking spaces contain signage identifying the space as accessible; and that such signage be a minimum of 60 inches above the ground. OCR determined that the accessible spaces had such signage. Additionally, the 2010 ADA Standards require that one in every six accessible spaces, or fraction of six accessible spaces, have signage designating the parking space as "van accessible." OCR determined that none of the accessible parking spaces had signage indicating that any of the accessible spaces were "van accessible." Based on the number of spaces available in the respective lots, OCR determined that one visitor, and two faculty/staff/student accessible parking spaces must be designated as "van accessible." The 2010 ADA Standards require that van accessible parking spaces be a minimum of 132 inches wide, or 96 inches wide where there is an access aisle that is at least 96 inches wide, as measured from the centerline. OCR determined that the existing designated parking spaces with their respective access aisles were sufficiently wide for vans and met the 2010 ADA Standards.

The 2010 ADA Standards require that floor and ground surfaces be stable, firm, and slip resistant; and that any changes in level between $\frac{1}{4}$ and $\frac{1}{2}$ inch shall be beveled with a slope not steeper than 1:2. OCR determined that the accessible route from the disabled parking spaces located in front of the UAB and leading to the entrance of the UAB was stable, firm and slip resistant, with no changes in level; however, the accessible route from the accessible parking spaces on the side of the MSC building and leading to the accessible entrance to the UAB, including the curb, had significant cracking and changes of level measuring one to two inches.

On January 9, 2015, the University agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the University fails to comply with the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

If you have any questions regarding OCR's determination, please contact Anna Moretto Cramer, Compliance Team Attorney, at (646) 428-3826 or Anna.Moretto.Cramer@ed.gov; or Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or Ebone.Woods@ed.gov.

Sincerely,

Timothy C.J. Blanchard

Encl.

cc: Janet Thayer, Esq.