

April 7, 2016

Dr. James P. Klyczek  
President  
Niagara County Community College  
3111 Saunders Settlement Road  
Sanborn, New York 14132

Re: Case No. 02-16-2015  
Niagara County Community College

Dear Dr. Klyczek:

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 Niagara County Community College (the College). The complainant alleged that facilities at the College are inaccessible to individuals with disabilities. Specifically, the complainant alleged that the Lewis Library building (the library) is inaccessible to individuals with disabilities because the door at the library's accessible entrance (Allegation 1) and the interior door leading to the library's elevator (Allegation 2) require too much force to open; and the library's elevator lacks accessible controls (Allegation 3). The complainant further alleged that the Notar Administration building's Student Development Office (SDO) and Testing Center are inaccessible to individuals with disabilities because the door at the entrance to the SDO (Allegation 4) and the door at the entrance to the Testing Center (Allegation 5) require too much force to open.

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 or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans Disabilities Act of 1990 (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 College is a recipient of financial assistance from the Department and is a public postsecondary institution. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

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 28 C.F.R. § 35.149.

During its investigation, OCR interviewed the complainant, the complainant’s client, who is a student at the College, and College personnel. OCR also reviewed documentation that the College provided. Additionally, OCR conducted an on-site inspection of the College’s facilities on March 8, 2016. OCR made the following determinations.

With respect to Allegation 1, the complainant alleged that the door at the library’s accessible entrance requires too much force to open. OCR determined that the library was constructed between 1968 and 1972. The regulation implementing Section 504, at 34 C.F.R. §104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities”. Accordingly, the library is an “existing facility” under the regulation implementing Section 504.<sup>1</sup> The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.<sup>2</sup> Accordingly, each program or activity operated in the library, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

OCR determined that the academic buildings at the College are arranged in a figure-eight formation and interconnected by a series of interior walkways. Both the main entrance and the accessible entrance to the library are located within an interior walkway that connects the Notar Administration Building with the library. The library’s main entrance is not accessible to individuals with mobility impairments because it is located on the building’s second floor at the top of a set of stairs. The designated accessible entrance for the library is located on the building’s first floor, within the College’s Child Development Center (the CDC). OCR determined that the door at the library’s accessible entrance requires approximately 5 pounds of force to open. Pursuant to the 2010 ADA Standards for Accessible Design (2010 ADA Standards), an interior door’s opening force should be no more than 5 pounds. Thus, OCR did not find any compliance concerns with respect to the amount of force required to open the door at the library’s accessible entrance. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant’s allegation that the door at the library’s accessible entrance requires too much force to open. Accordingly, OCR will take no further action with respect to Allegation 1.

With respect to Allegation 2, the complainant alleged that the interior door leading to the library’s elevator requires too much force to open. Upon entering the library’s accessible

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<sup>1</sup> The library is also an existing facility under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

<sup>2</sup> The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

entrance, mobility impaired individuals must travel through the CDC lobby and pass through an interior door to reach the library's elevator. OCR determined that the interior door requires approximately 5 pounds of force to open. Thus, OCR did not find any compliance concerns with respect to the amount of force required to open the interior door leading to the library's elevator. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the interior door leading to the library's elevator requires too much force to open. Accordingly, OCR will take no further action with respect to Allegation 2.

With respect to Allegation 3, the complainant alleged that the library's elevator lacks accessible controls. The College informed OCR that a key is required to use the library's elevator because the elevator can travel to the fourth-floor of the library where the College's heating, ventilation, and air conditioning (HVAC) system is located. The key to the library's elevator is placed on a hook that is attached to a filing cabinet in the lobby of the director's office. In order to call the elevator to the first floor, the key must be inserted into the elevator's exterior control panel and rotated approximately 90 degrees. Pursuant to the 2010 ADA standards, operable parts, which include elevator controls, shall not require tight grasping or twisting of the wrist. Accordingly, since persons with mobility impairments must operate the elevator with the use of a key on the external controls that must be grasped and twisted 90 degrees in order to access the designated accessible entrance to the library, OCR determined that this does not meet the 2010 ADA standards.

From the inside, the elevator is operated through the use of push buttons located on a control panel mounted to the left of the front elevator doors. OCR determined that the push buttons used to open and close the elevator doors are approximately 48" from the elevator floor. The push buttons for floors two, three, and four, are approximately 54", 57", and 60" from the floor of the elevator respectively. The elevator also contains two emergency buttons, which are located on the top of the control panel approximately 66" from the elevator floor. Pursuant to the 2010 ADA standards, existing elevator controls may be 54" from the elevator floor as measured by the highest operable part, but emergency elevator controls shall be grouped at the bottom of the control panel. OCR also determined that in order to travel down from the fourth, third, or second floor of the library to the first floor, the elevator key must be inserted into the interior control panel and rotated approximately 90 degrees. Accordingly, OCR determined that the designated controls for the elevator in the library do not meet the 2010 ADA standards, because persons with mobility impairments are required to operate the elevator's interior control panel with the use of a key that must be grasped and twisted 90 degrees, the push buttons for floors three and four are too high, and the emergency buttons are not located at the bottom of the elevator control panel.

Although the library is an existing facility under the regulations implementing Section 504 and the ADA, the second and third floors of the building offer unique programs and activities to students at the College. Unique programs located on the second floor include the library reference desk, the College's tutoring program, and the College's learning commons. Unique programs located on the third floor include the library's instructional technology room and multi-media film room. The second and third floors also contain portions of the library's books and other media. Based on the compliance concerns identified above with respect to the library's elevator, OCR determined that qualified individuals with disabilities are excluded from

participation in the unique programs and activities located on the second and third floors of the library. Therefore, the College must have an alternative plan to ensure that each program and activity conducted in the library, when viewed in its entirety, is readily accessible to individuals with disabilities; or it must make structural changes to the library's elevator in order to meet the applicable accessibility standards.

The College informed OCR that in May 2016, the library will be closed for approximately 18-22 months for renovations. The College stated that the library, including the tutoring and learning commons programs, will be temporarily relocated to the second floor of the College's G building during this renovation period. The College further stated that individuals with mobility impairments can access the second floor of the G building through elevators located on the first floor of the E and G buildings.

OCR determined that the College's E and G academic buildings were constructed in 1970. Therefore, OCR determined that the E and G academic buildings, including the elevators in both buildings, are "existing facilities." Accordingly, each program or activity operated in the E and G buildings, when viewed in its entirety, must be readily accessible to individuals with disabilities.

OCR examined the E and G building elevators and determined that both are constructed with a similar design. With respect to inside control panels for both elevators, OCR determined that the push buttons used to open both elevators' doors are approximately 53" from the elevators' floors.<sup>3</sup> The push buttons for floors one and two are approximately 54" and 58" from both elevators' floors respectively. Both elevators also contain two emergency buttons, which are located in middle and at the top of the control panels approximately 56" and 59" from both elevators' floors respectively. Based on the foregoing, OCR identified compliance concerns for both elevators for the temporary library during the renovation of the existing library, because of the height of the elevator controls for floor two and the placement of the emergency buttons. Therefore, the College must have an alternative plan to ensure that each program and activity conducted in the temporary library, when viewed in its entirety, is readily accessible to individuals with disabilities; or it must make structural changes to the temporary library's elevator in order to meet the applicable accessibility standards.

With respect to Allegation 4, the complainant alleged that the door at the entrance to the SDO requires too much force to open. OCR determined that the SDO was constructed in 2001. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Accordingly, OCR determined that the SDO is new construction under the regulation implementing Section 504.<sup>4</sup> The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.<sup>5</sup> The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, be in compliance with the Uniform

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<sup>3</sup> A key is not necessary to operate the elevators in the E and G buildings.

<sup>4</sup> Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction".

<sup>5</sup> The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).<sup>6</sup>

OCR determined that the entrance to the SDO is located within the lobby of the Notar Administration building. OCR determined that the entrance door requires approximately 11 pounds of force to open. Pursuant to the 2010 ADA Standards, at 404.2.9.1, the force for pushing or pulling open an interior hinged door shall be 5 pounds maximum. Thus, OCR found a compliance concern with respect to the amount of force required to open the door at entrance to the SDO. The College informed OCR that it has taken steps to address this compliance concern. Since the time it learned of the complainant's complaint filed with OCR, the College stated that the entrance door to the SDO has been left open. The College also informed OCR that it is in the process of installing an automatic door opener on the entrance door.

With respect to Allegation 5, the complainant alleged that the door at the entrance to the Testing Center requires too much force to open. OCR determined that the Testing Center was constructed in 2001. Accordingly, OCR determined that the Testing Center is new construction under the regulations implementing Section 504 and the ADA.

The entrance to the Testing Center is also located within the lobby of the Notar Administration building. OCR determined that the entrance door requires approximately 5 pounds of force to open. Thus, OCR did not find a compliance concern with respect to the amount of force required to open the entrance door to the Testing Center. Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the door at the Testing Center's accessible entrance requires too much force to open. Accordingly, OCR will take no further action with respect to Allegation 5.

On April 7, 2016, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this letter. OCR will monitor the implementation of the resolution agreement.

This letter should not be interpreted to address the College'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 College 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.

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<sup>6</sup> Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA standards.

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, it 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 about OCR's determination, please contact Logan Gerrity, Compliance Team Attorney, at (646) 428-3791 or [logan.gerrity@ed.gov](mailto:logan.gerrity@ed.gov); or James Moser, Compliance Team Attorney, at (646) 428-3792 or [james.moser@ed.gov](mailto:james.moser@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.