



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475  
CHICAGO, IL 60661-4544

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February 3, 2017

Dr. Thomas G. Coley  
Chancellor  
Ivy Tech Community College  
220 Dean Johnson Blvd  
South Bend, Indiana 46628

Re: OCR Docket # 05-16-2342

Dear Dr. Coley:

This is to advise you of the resolution of the above-referenced complaint filed against Ivy Tech Community College (College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

The complaint alleges that the College discriminates against individuals with disabilities by failing to provide at the South Bend campus a working entrance that is accessible for individuals with disabilities and parking for individuals with disabilities in an appropriate location in its student/visitor parking lot.

OCR is responsible for enforcing 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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 - 12134, and its implementing regulation at 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the College is subject to these laws.

### **Legal Standards**

**Accessibility, general:** The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

**Accessibility, existing facilities:** The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed "existing facilities," the College will operate the programs, activities and (as to Title II) services so that,

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The College may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The College is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the College must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971) (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 [ADA] Standards.”

Chapters 2 and 5 of the 2010 ADA Standards set forth the requirements for parking spaces. In a lot with 26 to 50 parking spaces, a minimum of two must be accessible.

Under the 2010 ADA Standards, accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. Where buildings have multiple accessible entrances with adjacent parking, the accessible parking spaces must be dispersed and located closest to the accessible entrances. Accessible parking spaces may be clustered in one or

more lots if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience.

The 2010 ADA Standards state that accessible parking spaces for cars must be at least 96 inches wide with a 60-inch wide marked access aisle located adjacent to the designated parking space. An access aisle may be shared by two spaces. One in every six accessible parking spaces is required to be van-accessible. Van-accessible parking spaces must be at least 132 inches wide with a 60-inch marked access aisle or 96 inches wide with a 96-inch wide marked access aisle. Accessible parking spaces must be identified with a sign that displays the International Symbol of Accessibility and the bottom of the sign must be at least 60 inches above the ground. Van-accessible parking spaces must have a sign that identifies the parking space as “van-accessible.”

Section 4.3 of UFAS sets forth the requirement for an accessible route. An accessible route must be at least 36 inches wide and must be stable, firm, and slip-resistant. The running slope along the accessible route must not be steeper than 1:20 and the cross slope must not be steeper than 1:50. If the accessible route crosses a curb, there must be a curb ramp. The curb ramp must be at least 36 inches wide. If a curb ramp is located where pedestrians must walk across the ramp, or where it is not protected by handrails or guardrails, then it shall have flared sides, with a maximum slope of 1:10. The running slope of the curb ramp must not be steeper than 1:12 and the cross slope must not be steeper than 1:50.

Sections 4.12 and 4.14 of UFAS set forth the requirements for accessible doors and entrances. The doorway shall have a minimum clear opening of 32 inches wide. Automatic doors shall be slow opening and low-powered. An accessible entrance must be connected to an accessible route, accessible parking and accessible spaces within a building.

### **Facts**

The Complainant advised OCR that the parking lot and entrance about which the complaint was filed are those for the College building located at 250 East Sample Street. According to the College, the building was constructed in 2004 and houses the Workforce Alignment Department, the regional testing center, and offices. The parking lot is located across the street from the building; the College indicated that the lot was constructed in 2010 and most recently restriped in August 2016.

There are 40 parking spaces in the lot, three of which are designated for use by individuals with disabilities. The three spaces are located on the south end of the parking lot, while the entrance to the building is closer to the north end of the lot. There are numerous spaces in the lot closer to the entrance.

Each of the three spaces designated for use by individuals with disabilities is 8 feet, 9 inches wide and has signs posted at a height of 58 inches identifying the spaces as being for use by individuals with disabilities. There are access aisles between each of the spaces, 5 feet, 6 inches wide.

The route from the parking lot to the entrance to the building is at least 36 inches wide and is level, firm, stable, and slip resistant, with a curb cut and one ramp that slopes 2.4 degrees.

There are two doors at the entrance to the building, an exterior and an interior door. Both doors have functional push buttons.

### **Analysis and Conclusion**

OCR determined that UFAS or ADAAG applies to the building, as it was constructed in 2004. OCR determined that the route from the parking lot to the building entrance and the entrance itself are in conformance with UFAS. The route to the entrance of the building is flat, with one slope of 2.4 degrees. The entrance to the building has two functional push buttons. Therefore, OCR determined that the route and the entrance are in compliance with the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151.

OCR determined that the 2010 ADA standards apply to the parking lot as it was restriped in August 2016. The parking lot has a sufficient number of spaces designated for individuals with disabilities as required by the 2010 ADA Standards. In addition, the width of the spaces and the width of the access aisles conform to the 2010 ADA Standards.

However, the signage in the spaces does not conform to the 2010 ADA Standards, as the signs are mounted at a height of 58 inches, two inches lower than allowable. In addition, the location of the spaces does not conform to the 2010 ADA Standards, as they are not located on the shortest accessible route of travel to the accessible facility entrance.

Based on the above, OCR determined that the College is not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.23(b), and the Title II regulations, at 28 C.F.R. § 35.151, with regard to the parking lot.

The College signed the enclosed Resolution Agreement (Agreement), which, when fully implemented, will fully resolve the issues covered in the complaint. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address 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.

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.

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.

OCR wishes to thank the College and Mr. James Clark, Assistant General Counsel, for the cooperation extended to OCR during the course of this activity. If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact Sunita Kini-Tandon, Senior Civil Rights Attorney, at 312-730-1452 or by email at Sunita.Kini-Tandon@ed.gov.

Sincerely,

Jeffrey Turnbull  
Team Leader

Enclosure

cc: Mr. James Clark