



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115

REGION XV
MICHIGAN
OHIO

August 27, 2015

Mr. Jeffrey Bodimer
Chief Operations/Compliance Officer
American Higher Education Development Corporation
116 Village Boulevard, Suite 200
Princeton, New Jersey 08540

Re: OCR Docket #15-15-2045

Dear Mr. Bodimer:

This letter is to notify you of the disposition of the complaint filed against Stautzenberger College in Brecksville, Ohio (the College) with the U.S. Department of Justice, Disability Rights Section, on September 2, 2014, and referred to the U.S. Department of Education's Office for Civil Rights (OCR) on December 12, 2014. The complaint alleged discrimination on the basis of disability. Specifically, the complaint alleged that individuals with mobility impairments and visual impairments are denied access to programs at the College because of a lack of an accessible building entrance and lack of Braille signage.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. As a recipient of Federal financial assistance from the Department and as a public entity, the College is subject to Section 504. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegation, OCR investigated the following legal issue: whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination in programs or activities because the College's facilities are inaccessible to or unusable by persons with disabilities in violation of 34 C.F.R. §§ 104.21-104.23.

To investigate this complaint, OCR interviewed the Complainant, reviewed documentation submitted by the College, and conducted an onsite visit of the College to assess the College's signage and the accessibility of the College's entrance doors. Based on the information obtained, OCR found insufficient evidence that the College's entrance doors are inaccessible to individuals with mobility impairments. However, OCR determined that there was sufficient evidence of a violation of Section 504 with respect to the College's signage. The College submitted a resolution agreement to address the non-compliance finding. OCR's findings and the resolution are explained below.

Background

The College is a private institution that specializes in career education. The College leases space in a building in Brecksville, Ohio, that was built specifically for the College in 2008. The College reported to OCR that the building has been in its current configuration since it opened for business in 2008. The facility encompasses 24,700 square feet in a one-story building located in a business park on Katherine Boulevard. The building contains: 8 classrooms; 17 administrative offices; 1 surgery suite (including 2 surgery rooms); 1 radiology suite; 3 kennels; 1 microbiology lab; 2 computer labs; 4 conference rooms; 1 massage therapy lab; 1 medical technologies lab; 1 personal fitness training lab; 1 student lounge; 1 faculty and staff lounge; 1 faculty office; 1 records storage room; a bookstore; and 1 office services room.

The Complainant alleged that the building has no doors that are accessible for persons with disabilities. Specifically, he alleged that the front door is extremely hard for someone using a wheelchair to open. The Complainant said he observed a student with a disability struggle to gain entry into a building at Stautzenberger College's Maumee, Ohio, campus because the force required to open the door was too great, and there was no automated opening device for the door. He also said that, although there are double doors at the building, only one door would be unlocked at times.¹ He said a similar situation existed at the Brecksville campus. He also alleged that the College lacks Braille signage throughout. He said College employees who presently work in the building have told him that, while there is some Braille signage, it is incomplete and located only in some areas of the building.

Applicable Regulatory Standards

The Section 504 regulation states that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. 34 C.F.R. § 104.21. The regulation references standards for determining whether an entity's programs, activities,

¹ The Complainant's allegation about the accessibility of the Maumee campus is being addressed through OCR Docket #15-15-2035.

and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing construction, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulation requires an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977.

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a). Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977.

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b).

For an entity covered by Section 504, new construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to the Uniform Federal Accessibility Standards (UFAS) or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the Section 504 regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

The U.S. Department of Justice (DOJ) published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, private recipients have the option of complying with either UFAS or the 2010 ADA Standards (except that Exception (1) to Section 206.2.3 does not apply for recipients), until the Department revises its Section 504 regulation to formally adopt the 2010 ADA Standards in lieu of UFAS.

Summary of OCR's Investigation, Analysis, and Conclusions

OCR conducted an onsite visit of the College in May 2015 to assess the College's signage and the accessibility of the College's entrance doors. As summarized below, during its visit, OCR determined there was insufficient evidence that the College's entrance doors were inaccessible to individuals with mobility impairments. However, OCR determined that the College's signage does not comply with appropriate ADA standards.

- **Building Entrance**

As noted above, the College leases space in a building that was built specifically for the College by its developer in 2008. Students and the public access the building through one main double-width door entrance, without a vestibule. Other entrances are reserved for staff only and for emergency exiting. The main entrance opens to a reception area with seating outside several administrative offices. Hallways connect throughout the building from the reception area and lead to classrooms, laboratories and other spaces. Both of the front doors were unlocked and functional on the day OCR visited the College.

The College reported that the building has been in the same configuration since 2008. Although the College did not directly respond to OCR's request for which accessible design standards it followed in the construction, the College's assertion that the facility "meets the local American with Disability Act (ADA) requirements" indicated that the College used the 1991 ADA Standards. Therefore, OCR analyzed the relevant building elements using the 1991 ADA Standards, which can be found at the URL:
<http://www.ada.gov/1991standards/1991standards-archive.html#Anchor-16919>.

According to Section 4.13.5 of the 1991 ADA Standards, doorways shall have a minimum clear opening of 32 inches with the door open 90 degrees, measured between the face of the door and the opposite stop. OCR measured the main entrance double-width doorway at the outside, with each door opening measuring 32 inches wide. There is no center post or obstruction to impede access when the doors are both open. The opening when both doors are open measures 64 inches of unimpeded access.

Under 4.13.6 of the 1991 ADA Standards, front approaches to the pull side of swinging doors shall have maneuvering space that extends from the hinge side of the door to 18 inches minimum, 24 inches preferred, beyond the latch side of the door and 60 inches minimum perpendicular to the doorway. The clear space at the front approach of the College's entrance exceeds these dimensions on clear and level concrete. There is only a single set of doors, with no series, to navigate to enter the building.

Under 4.13.8 of the 1991 ADA Standards, thresholds at doorways shall not exceed 3/4 inch in height for exterior sliding doors or 1/2 inch for other types of doors. Raised thresholds and floor level changes at accessible doorways shall be beveled with a slope no greater than 1:2. The threshold at the doorway into the College measures 1/4 inch in height, with a beveled edge and negligible slope.

In accordance with 4.13.9 of the 1991 ADA Standards, door hardware, handles, pulls, latches, locks, and other operating devices on accessible doors shall have a shape that is easy to grasp with one hand and does not require tight grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms, push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors are fully open, operating hardware shall be exposed and usable from both sides. Hardware required for accessible door passage shall be mounted no higher than 48 inches above a finished floor. The door hardware on the entrance door to the College was found to be easy to operate from both the outside approach and the inside approach. The opening hardware for the outer doors, on the outer side, are in the form of grab handles that are operable with one hand and do not require tight grasping, pinching, or twisting of the wrist. Hardware on either side of the doors was mounted well below the maximum height at 37 inches from the pavement on the outside and 40 1/2 inches from the finished floor on the inside.

Under 4.13.10 of the 1991 ADA Standards, if a door has a closer, then the sweep period of the closer shall be adjusted so that from an open position of 70 degrees, the door will take at least 3 seconds to move to a point 3 inches (75 mm) from the latch, measured to the leading edge of the door. The College entry doors have a closer. The sweep periods of both of the entry doors were greater than the 3 second minimum standard described above.

Under 4.13.11 of the 1991 ADA Standards for door opening force, the maximum force for pushing or pulling open a door for exterior hinged doors is not specified, as there is no maximum force dictated by the standards. Force required to open both doors at the College was 18 pounds. OCR notes that, similarly, the 1991 ADA Standards do not specifically require automatic doors and/or power-assisted doors. See Standard 4.13.12.

OCR notes that the lobby floor is tile. There is a removable, heavy carpeted mat at the inside door with low pile material and beveled rubber edging.

Based on the above information, OCR has determined there is insufficient evidence that the College's entrance doors are inaccessible to or unusable by persons with disabilities in violation of Section 504.

- **Braille Signage**

The College reported to OCR that signage was installed when the building was constructed in 2008, and that it is present throughout the building.

Under 4.1.2(7) of the 1991 ADA Standards for Building Signage, signs that designate permanent rooms and spaces are required to comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs that provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities that shall be identified by the International Symbol of Accessibility and that shall comply with 4.30.7 include, in part: “[a]ccessible entrances when not all are accessible (inaccessible entrances shall have directional signage to indicate the route

to the nearest accessible entrance).” OCR confirmed the presence of posted signage, including Braille (with one exception noted below), outside of College rooms or spaces that appear to be permanent or not likely to change over time. However, the College’s entrances do not include appropriate signage.

Under 4.30.4 of the 1991 ADA Standards for Raised and Braille Characters and Pictorial Symbol Signs (Pictograms), letters and numerals shall be raised 1/32 inch, upper case, sans serif or simple serif type and shall be accompanied with Grade 2 Braille. Raised characters shall be at least 5/8 inch high, but no higher than 2 inches. Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 inches minimum in height. The characters on the College signs are raised 1/32 inches, and characters are at least 5/8 inch in height. The characters are upper case in simple serif type script and are accompanied by Braille characters. OCR notes that one sign designating an office as “ADMISSIONS” did not have Braille characters or raised letters; thus, the College has not fully complied with Standard 4.30.4.

Under 4.30.5 of the 1991 ADA Standards, regarding finish and contrast, the characters and background of signs shall be eggshell, matte, or other non-glare finish. Characters and symbols shall contrast with their background—either light characters on a dark background or dark characters on a light background. The posted signs at the College are composed of a dark red-brown background color with a non-glare finish. The letter and number characters are white. Accordingly, the signage at the College meets the criteria specified under 4.30.5.

According to 4.30.6 of the 1991 ADA Standards, where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. OCR observed that the sign for the student lounge was affixed to the door for the room, and not the latch side adjacent wall; thus, the College has not fully complied with Standard 4.30.6.

Standard 4.30.6 also requires the mounting height of signage to be 60 inches above the finished floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 inches of signage without encountering protruding objects or standing within the swing of a door. OCR found that signs throughout the building were clearly accessible without encountering objects or impediments of any sort in accordance with the standard. However, OCR found that, with few exceptions, the majority of the mounted signs are located approximately 48 inches above the finished floor to the centerline of the sign. OCR also noted that several rooms were labeled with double/stacked signage, with neither sign meeting the requisite 1991 ADA Standards (e.g., Room 140 and the Human Health Sciences Lab).

In summary, none of the signs that OCR observed and/or measured were mounted at the appropriate height. In addition, OCR observed at least one sign (admissions office) that did not include Braille or raised characters, and at least one sign (student lounge) that was improperly mounted to the room door. The College does not have proper signage to identify its entrance.

Based on this information, OCR has determined that the College's signage is not mounted in accordance with the relevant ADA standards. Accordingly, the College is in violation of 34 C.F.R. § 104.23.

Resolution

On August 20, 2015, the College signed the enclosed agreement to resolve OCR's noncompliance finding. The agreement requires the College to (a) complete a self-evaluation of its Section 504 accessibility at the campus and develop and submit to OCR for review and approval an action plan setting forth the steps necessary to ensure that its facility is accessible to individuals with disabilities; and (b) implement the action plan, including but not limited to adding signage and modifying current signage locations to comply with the 2010 ADA Standards.

OCR will monitor the implementation of the agreement. The College's first monitoring report is due by October 31, 2015. If the College does not fully implement the agreement, OCR will take appropriate action to ensure the College's compliance with Section 504.

This concludes OCR's investigation of the complaint and 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 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 harmed individual may file another complaint alleging such treatment.

OCR would like to thank you and the College for your cooperation in the investigation and resolution of this matter. The OCR contact person for the monitoring of the agreement is Mr. Stephen Buynack, who may be reached at (216) 522-7643 or at Stephen.Buynack@ed.gov.

If you have any questions about this letter, you may contact Mr. Donald S. Yarab, Supervisory Attorney/Team Leader, at (216) 522-7634.

Sincerely,

/s/

Meena Morey Chandra
Director

Enclosure