



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

December 22, 2020

Leslie Ward
President
Vermont College of Fine Arts
By email: leslie.ward@vcfa.com

Re: Complaint No. 01-17-2097
Vermont College of Fine Arts

Dear President Ward:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Vermont College of Fine Arts (College). The Complainant alleged that the College discriminated against her on the basis of disability. Specifically, the Complainant alleged that, during the XXXXXXXX school year, the College discriminated against her on the basis of disability by failing to: routinely clear snow and ice from walkways and ramps used to access academic buildings (Allegation 1); provide the Complainant access to the campus mail facility at times when students without mobility impairments were able to access the facility (Allegation 2); provide her with adequate accommodations in connection with a screening held at a local theater on XXXXXXXXXXXX and a trip to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Allegation 3); provide her with XXXX XXXXXXXXXXXX in her dormitory from XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Allegation 4); and provide her with lodging that was equal to the lodging provided to students without mobility impairments during a class trip to XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX (Allegation 5).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. Because the College receives federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

During the investigation, OCR reviewed documents provided by the Complainant and the College and interviewed the Complainant. After carefully considering all of the information obtained during the investigation, OCR found insufficient evidence to support Allegation 5.

Before OCR completed its investigation of Allegations 1, 2, 3, and 4, the College expressed a willingness to resolve these allegations pursuant to Section 302 of OCR's *Case Processing Manual (CPM)*. OCR's findings and conclusions are discussed below.

for her to attend her classes by Skype on days with heavy snowfall but that the connection was spotty and that she had difficulties participating fully.

The College reported to OCR that, on XXXXXXXXXXXXX, the College adjusted its general protocol for snow and ice removal to make the campus more accessible to the Complainant; specifically, the College developed a ramp and walkway clearing protocol which accounted for the Complainant's class schedule. The College reported that "[a] staff member served as a designated ramp/walkway clearer so that the College's limited facilities resources could be focused on clearing walkways and ramps when and where [the Complainant] was most likely to need to use them." The College also noted that it "enlisted staff in each building on campus to monitor the condition of ramps and to pitch in if they saw the snow was building up or additional salt needed spreading."

The College reported that "[t]his adjustment worked well for the most part, but on the snowiest days (of which there were many during the XXXXXXXX winter), it was not possible for the College to keep all of the ramps and walkways completely clear at all times." The College stated that "[g]iven this, the College arranged for [the Complainant] to participate in her classes via Skype on those days when the weather made it impractical for her to leave her dormitory."

OCR reviewed documentation provided by the Complainant and the College regarding the College's snow and ice removal during the XXXXXXXX school year. Email correspondence and meeting notes show that the Complainant notified the College of snow and ice buildup on ramps and walkways on numerous occasions and that College staff emailed and met with the Complainant regularly (weekly for certain periods) to discuss snow and ice removal problems, as well as other accessibility issues. The documentation also shows that the Program Director arranged for the Complainant to attend class through Skype due to heavy snowfall on multiple days.

The Complainant noted that she saw a significant improvement in the College's snow removal protocol and efforts during the XXXXXXXX school year; she explained that College staff met with her to develop a plan before the school year started and that, according to the plan, the facilities department would clear her route before class and, if her route was not clear thirty minutes before class, she could call and remind them.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a college's programs or activities because the college's facilities are inaccessible to or unusable by individuals with disabilities.

The regulation implementing Section 504 contains two standards for determining whether a college's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under

the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under the Section 504 standard.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, requires a college 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. The college may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a college must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), requires that the college design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), requires that, to the maximum extent feasible, the college alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provision of the Section 504 regulation sets forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS) although deviations from UFAS are permitted if such deviations provide substantially equivalent or greater access to and usability of the facility. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 Americans with Disabilities Act Accessibility Guidelines (ADAAG), at 36 C.F.R. Part 1191, appendices B and D.

A public entity must maintain in operable working condition those features, including walkways, of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities, with only isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II of the Americans with Disabilities Act (Title II), at 28 C.F.R. § 35.133, and is also generally applicable to recipients of federal financial assistance under Section 504.⁴ Part of this maintenance obligation includes reasonable snow removal efforts.

⁴ The regulation implementing Title II, at 28 C.F.R. §§ 35.149–52, requires public entities to offer accessible facilities. The regulation implementing Section 504, at 34 C.F.R. §§ 104.21–23, requires recipients of federal financial assistance, such as the College, to offer accessible facilities.

Resolution

OCR does not have sufficient evidence at this time to determine whether the College discriminated against the Complainant on the basis of disability by failing to maintain accessible routes clear of snow and ice so that she had access to the College's programs and activities.

The College reported to OCR and provided documentation showing that, in XXXXXXXX, it adjusted its snow removal protocol to prioritize the accessible routes to be used by the Complainant. Documentation gathered to date indicates that College staff emailed and met with the Complainant regularly to discuss accessibility issues and initiated action on items raised. The Complainant told OCR that College staff met with her to discuss accessibility problems, but that she continued to experience issues navigating the campus due to snow or ice buildup, citing ramps as a particular issue.

The Complainant reported to OCR that, during the XXXXXX school year, she missed three or four days of classes due to snow or ice buildup on walkways and/or ramps used to access academic buildings. The evidence indicates that the College arranged for the Complainant to attend her classes remotely on days when it could not provide her physical access; however, the Complainant reported that she experienced some technological issues with remote learning, which affected her ability to fully participate.

To complete its investigation, OCR would need to interview College staff regarding its snow and ice removal protocol and efforts, and conduct an onsite visit to view the College's accessible exterior routes. These steps would be necessary to fully understand, among other things, the extent of the College's snow and ice removal efforts and whether access issues related to its walkways and ramps were addressed in a reasonable period of time. Prior to OCR completing its investigation and making any findings, the College requested to voluntarily resolve this allegation under *CPM* Section 302, which OCR determined is appropriate.

Allegation 2 – Mailroom Access

Background

The College's mail facility is located in College Hall and is accessible from the main entrance. The Complainant alleged that, on the weekends, she could not access the mailroom because the main entrance was locked, but that students without mobility impairments could access it through a back entrance. She stated that the back entrance had multiple stairs and was thus inaccessible to her. She further stated that she told the Program Director that she could not access her mail on the weekends, but that the College did not address the issue. In particular, she said that the Program Director told her that they would keep the main entrance unlocked on the weekends, but that whenever she would check, the door was always locked.

The College reported to OCR that College Hall is not open on the weekends but that the housekeeping staff used to unlock the back entrance during their weekend shift to remove trash. The College reported that at some point during the XXXXXX school year, students discovered that there were times during the weekend when they could access the mailroom through the back

entrance. The College represented that when it became aware that some students were able to access the mailroom while others were not, it changed the trash removal procedure so that the accessible main entrance would be unlocked during the weekend housekeeping shift.

The College provided OCR with email correspondence regarding the Complainant's report that she could not access the mailroom to the same extent as other students. On XXXXXXXXXXXX, the Program Director emailed the facilities department and the Vice President for Campus Planning her notes from a recent meeting with the Complainant, at which the Complainant had reported the mailroom issue. In her email, the Program Director asked: "If the building is open on Saturday, can we make sure that the front door is unlocked so the building is accessible for [the Complainant]?" On XXXXXXXXXXXX, the Vice President for Campus Planning emailed the Complainant and the Program Director that she had reached out to the facilities department to see if they could unlock the accessible entrance to College Hall when the backdoor was unlocked.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the college's programs or activities on the basis of disability. In addition, the Section 504 regulation, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a college's programs or activities because the college's facilities are inaccessible to or unusable by individuals with disabilities. As detailed above (*see* Allegation 1), the Section 504 regulation sets forth standards for determining whether a college's programs, activities, and services are accessible to individuals with disabilities.

Resolution

OCR does not have sufficient evidence at this time to determine whether the College discriminated against the Complainant on the basis of disability by failing to provide the Complainant access to the campus mail facility at times when students without mobility impairments were able to access the facility. The College reported to OCR that, upon learning that the Complainant was not able to access her mail to the same extent as other students, it changed its procedure so that the accessible main entrance would be unlocked during the weekend housekeeping shift. However, the Complainant reported to OCR that she still was not able to access her mail after she reported the issue.

To complete its investigation, OCR would need to interview College staff and request additional data. These steps would be necessary to be able to determine whether the College, in fact, implemented a procedure to ensure that its mailroom is open and accessible to students with mobility impairments to the same extent as it is to students without mobility impairments. Prior to OCR completing its investigation and making any findings, the College requested to voluntarily resolve this allegation under *CPM* Section 302, which OCR determined is appropriate.

Allegation 3 – Film Screening & XXXXXXXXXXXX Trip

Background

Film Screening at a Local Theater

On XXXXXXXXXXXX, the Program Director emailed the Complainant that, on XXXXXXXXXXXX, the local cinema would be screening a film by XXXXXXXXXXXXXXXXXXXX and that she is asking all students in the XXXXXXXXXXXX program to attend. The Program Director wrote that she was reaching out to the Complainant before she sent out the announcement because the theater is only accessible by stairs. She wrote that the professor would provide the Complainant with a link to the film so that she could view the movie on her own. She further noted that there was “no pressure/expectation” that the Complainant attend, but to let her know if there was any way to make it work for her and if she would like to attend.

In response, the Complainant asked how many stairs there were to access the theater and wrote that she “would rather be at the theater, if possible,” noting that “the atmosphere in an enthusiastic crowd makes watching a movie in the theater different from watching at home, plus, I am interested in the Q&A after.” The Program Director replied that there were three stairs to the main door and then 15 stairs down to the theater. The Program Director asked: “Is there a way we can help/carry you to make it easier?” The Complainant responded: “That’s too many steps to make it down” and that “the link i[s] going to be the best option at this point.” She noted that she would ask a classmate to record the Q&A so that she could listen to it later, and that if she had any questions about the film, she would send them with a classmate.

The Complainant told OCR that the College provided her with an access code to view the film on her own. She reported that the access code did not work until after the screening occurred, so she was not able to watch it and submit questions in advance. She told OCR that missing the in-person screening and discussion did not affect her grade in the course but that she missed out on the opportunity to listen to and participate in the post-film discussion. The College reported to OCR that the College arranged office hours so that the Complainant could discuss the film with her professor.

Field Trip to XXXXXXXXXXXXXXXXXXXX

On XXXXXXXXXXXX, students in the XXXXXXXXXXXX program went on a field trip to the XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. The College did not provide transportation for any of the students. In an email on XXXXXXXXXXXX, the faculty member who arranged the trip asked the students to carpool with each other to XXXXX and provided logistical information about the trip, including hours, driving directions, and parking instructions. She instructed students to park along the green or in front of XXXXXX and noted how to access the elevator from the street. The Complainant responded to the email that she could drive herself and three other students. According to the College, there was ample parking available along the green and in front of XXXXX. The College also reported that the areas of XXXXX visited by the students as part of the class trip were located on the first floor of XXXXXX and that the public bathrooms were accessible by elevator. The College reported to OCR that it did not

provide or arrange an organized lunch plan, but that some students chose to eat together at a restaurant in the town of XXXXXX.

The Complainant alleged that the College did not provide adequate accommodations for her disability; specifically, that she had to travel farther by foot than her doctor recommended she should XXXXXXXXXXXXXXXXXXXXXXXX. The Complainant told OCR that, prior to the trip, she talked to her professor and told her that she could not walk far distances; and that the professor assured her that there was an elevator in XXXXX and handicap parking. The Complainant explained that she volunteered to drive herself and a few of her classmates so that she could use her handicap parking permit but that when they arrived, all of the handicap parking spaces were full and she had to park in a visitor spot that was farther away from XXXXX. She also told OCR that her class ate lunch at a restaurant in town and that she had to walk about half a mile to get to the restaurant and then back to XXXXX. She told OCR that there was no discussion of a lunch plan in advance of the trip, and that she had assumed that she would drive to a restaurant in town, but that she decided to walk instead because she was worried she would not be able to find parking.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the college's programs or activities on the basis of disability. The regulation at § 104.44(a) requires a college to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability.

Colleges may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the college. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the college must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in a school's program. However, the college is not required to make adjustments or provide aids or services that would result in a fundamental alteration of the college's program or impose an undue burden.

In determining what modifications are appropriate for a student with a disability, the college should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. The question of whether a college has to make modifications to its academic requirements or provide auxiliary aids is determined on a case-by-case basis. OCR generally does not substitute its judgment for that of qualified educators and professionals regarding modifications. Instead, OCR reviews relevant factual evidence to determine whether a college acted in a reasonable manner and whether it took appropriate steps consistent with Section 504 in making decisions regarding a student's eligibility for academic adjustments. Section 504 envisions a meaningful and informed process

with respect to the provision of modifications, e.g., through an interactive and collaborative process between the college and the student. If a college denies a request for a modification, it should clearly communicate the reasons for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation that would address the college's objections.

Section 504 does not require a college to modify academic requirements that are essential to the instruction being pursued by the student or to any directly related licensing requirement. In reviewing an institution's determination that a specific standard or requirement is an essential program requirement that cannot be modified, OCR considers whether that requirement is educationally justifiable. The requirement should be essential to the educational purpose or objective of a program or class. OCR policy requires, among other factors, that decisions regarding essential requirements be made by a group of people who are trained, knowledgeable and experienced in the area; through a careful, thoughtful and rational review of the academic program and its requirements; and that the decision-makers consider a series of alternatives for the essential requirements, as well as whether the essential requirement in question can be modified for a specific student with a disability. OCR affords considerable deference to academic decisions made by post-secondary institutions, including what is or is not an essential program requirement.

A college is not required to provide an academic adjustment or auxiliary aid if it can show that the requested adjustment or aid would pose an undue financial or administrative burden. Generalized conclusions are not sufficient to support a claim of undue burden. Instead, undue burden must be based on an individualized assessment of current circumstances that show a specific academic adjustment or auxiliary aid would cause significant difficulty or expense.

Resolution

OCR does not have sufficient evidence at this time to determine whether the College discriminated against the Complainant on the basis of disability by failing to provide her with accommodations in connection with the film screening held at a local theater on XXXXXXXXXX, and the trip to XX.

To complete its investigation, OCR would need to conduct interviews with College staff to fully understand, among other things, the College's academic adjustments process and the interactive process in this case (including who participated, e.g., staff from Disability Services).⁵ OCR would also need additional details about the events and the extent of the parking options at XX XXXXXX. Prior to OCR completing its investigation and making any findings, the College requested to voluntarily resolve this allegation under *CPM* Section 302, which OCR determined is appropriate.

⁵ OCR notes that carrying is generally an unacceptable method for achieving program accessibility for persons with mobility impairments. See *Nondiscrimination in Federally Assisted Programs, Policy Interpretations*, 43 Fed. Reg. 18630 (May 1, 1978), <https://www2.ed.gov/policy/rights/reg/ocr/frn-1978-08-14.html>.

center and her lodging; whereas, the inaccessible apartment that was available to students without mobility impairments was a short distance from the convention center. The College reported to OCR that the accessible apartment (located at XXXXXXXXXXXXXXXX), where the Complainant and two other students stayed, was .7 miles from the conference site—and the inaccessible apartment (located at XXXXXXXXXXXX), where three other students stayed, was .5 miles from the conference site. The College reported that students were given the addresses of the apartments in advance so that they could arrange for their own transportation to and from the site.

The College provided OCR with Google Maps printouts depicting travel routes from the two apartments to the conference site. OCR confirmed the distances of the walking routes by running independent searches based on the addresses provided by the College.

OCR provided the Complainant with the addresses of the two apartments and distances reported by the College. The Complainant noted that she did not think the reported distance of the travel route from the accessible apartment to the conference site was accurate; however, she did not provide any specific information (e.g., different addresses or routes) to rebut this information. The Complainant reported to OCR that she took a cab to and from the conference site on the first day and then rode her rental scooter on the subsequent days.

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the college's programs or activities on the basis of disability. When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or prima facie, case of discrimination. Specifically, OCR determines whether the college treated the Complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the college had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the college is a pretext, or excuse, for unlawful discrimination.

Analysis

OCR found insufficient evidence to conclude that the College discriminated against the Complainant on the basis of disability by treating her less favorably than similarly situated students without disabilities.

Based on the un rebutted information provided by the College, OCR found that the Complainant, along with two students without mobility impairments, stayed at an apartment .7 miles from the conference site, and that the three other students who attended the conference stayed at an apartment .5 miles from the conference site. In addition, OCR found that all students were responsible for arranging and paying for their own transportation to and from the conference site. OCR also notes that both parties provided documentation of the Program Director reaching out to the Complainant to ask whether she needed any assistance with arranging or paying for transportation to and from the conference site.

Accordingly, OCR determined that there is insufficient evidence to establish an initial, or prima facie, case of discrimination, namely that the College treated the Complainant less favorably than similarly situated students without disabilities.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *CPM*, the College expressed an interest in resolving this complaint and OCR determined that a voluntary resolution of Allegations 1, 2, 3, and 4 is appropriate. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will address Allegations 1, 2, 3, and 4. OCR will monitor the College's implementation of the Agreement.

This concludes OCR's investigation of the complaint. 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.

The Complainant has a right to appeal OCR's determination with respect to Allegation 5 within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to

protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/ Michelle Kalka
Michelle Kalka
Compliance Team Leader

Enclosure

cc: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX