



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

July 8, 2019

President Gena Glickman
Massasoit Community College
By Email: president@massasoit.mass.edu

Re: Complaint No. 01-18-2205
Massasoit Community College

Dear Dr. Glickman:

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 Massasoit Community College (College). The Complainant alleged that the College is discriminating on the basis of disability. Specifically, the Complainant alleged that the interior double doors leading to the TV Production classroom in the College's Fine Arts Building and the door to the single-user bathroom on the lower level of the Student Center Building are difficult to open for students with mobility impairments. The Complainant noted that these doors are too heavy and lack automatic door openers. As explained further below, before OCR completed its investigation, the College expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department. Because the College receives federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Because OCR determined that it has jurisdiction and that the complaint was timely filed, OCR opened the following allegation for investigation:

- Whether the College is discriminating on the basis of disability because the interior double doors leading to the TV Production classroom and the door to the single-user bathroom on the lower level of the Student Center Building are difficult to open for students with mobility impairments, in violation of 34 C.F.R. Sections 104.21, 104.22 and 104.23, and 28 C.F.R. Sections 35.149, 35.150, and 35.151.¹

¹ At the outset of the investigation, OCR notified the parties that it would be investigating whether the TV Production classroom and the bathroom lack accessible entrances. The Complainant clarified that the concern

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

Summary of Preliminary Investigation

During the investigation, OCR reviewed documents provided by the College, including a recent accessibility report from the Division of Capital Asset Management, Commonwealth of Massachusetts (DCAMM).² OCR interviewed the Complainant, the College’s former XXXXXXXXXXXX Director of XXXXXXXXXXXX and XXXXXXXX XXXXXXXXXXXX (Former XXXXXXXXXXXX Director), the Director of XXXXXXXXXXXX and XXXXXXXX XXXXXXXXXXXX (Current XXXXXXXXXXXX Director), the XXXXXXXXXXXX Manager, the XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX, and the XXXXX XXXXXXXXXXXX XXXXXXXX. OCR also spoke briefly with the College’s Director of XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX and the DCAMM XXXXXXXX XXXXXXXX. In addition, OCR visited the College to take measurements of the doors at issue.

With respect to the interior double doors in the Fine Arts Building, the evidence obtained by OCR to date contains inconsistencies regarding the date of construction of that building. Whereas the College informed OCR in its data response that the Fine Arts Building was constructed in 1978, the Former XXXXXXXXXXXX Director and the DCAMM Report identified 1976 as the year of construction. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977. Thus, if the Fine Arts Building was constructed in 1976, it would be considered an existing facility and the College would be required to provide programmatic accessibility. However, if the Fine Arts Building was constructed in 1978, it would be considered new construction and would need to fully comply with the American National Standards Institute (ANSI) Standards. Construction or alterations commencing on or after March 15, 2012 must comply with the 2010 ADA Standards for Accessible Design (2010 Standards). Based on OCR’s initial measurements, OCR found that several aspects of the interior double doors comply with both the ANSI Standards and the 2010 Standards. OCR found, however, that it required 13-15 pounds of force to open the doors, which does not comply with the 2010 Standards. The Former XXXXXXXXXXXX Director told OCR that he could easily fix the door pressure by adjusting the closer.

Regarding the single-user bathroom in the Student Center Building, the evidence obtained by OCR to date shows that the bathroom was renovated in 2015.³ Accordingly, the 2010 Standards apply. Based on OCR’s initial measurements, OCR found that several aspects (e.g., opening width, clear depth, floor surface, door threshold) comply with the 2010 Standards. OCR noted that the maneuvering clearance to exit the bathroom did not appear to be compliant due to the placement of the trash can and hand sanitizer. OCR also found that it required more than 5 pounds of force to open the door and fewer than 5 seconds for the door to close, both of which raise compliance concerns under the 2010 Standards. The DCAMM report corroborated these observations. Further, several individuals expressed concerns to OCR about door pressure,

actually related to the interior double doors next to FA220 in the Fine Arts building, which are on the route to the TV Production classroom. OCR notified the College of this clarification and updated the legal issue accordingly.

² The College is currently conducting accessibility renovations throughout its campus in response to the DCAMM report.

³ The door to the single-user bathroom contains a sign that states “All Gender Restroom” and includes the International Symbol of Accessibility.

obstructions, and/or difficulty accessing the bathroom. During OCR’s investigation, the College informed OCR that it has started to address these concerns by placing a work order to remove obstructions, adjusting the door pressure, ordering pressure gauges, and developing a plan to regularly check door pressure.

Regarding the role of the ADA Coordinator, the evidence obtained by OCR to date suggests that there had been some confusion as to who was serving in this position until recently. Indeed, the DCAMM report, issued in 2018, listed the Director of XXXXX XXXXXXXXXXXX as the ADA Coordinator. Although it is now apparent that the XXXXX XXXXXXXXXXXX XXXXXXXX serves as the ADA Coordinator, she has not yet received any formal training, although she is hoping to attend a training in September 2019.

Finally, the information obtained by OCR to date contains some inconsistencies regarding the process for students and employees to raise physical accessibility concerns. The XXXXX XXXXXXXXXXXX XXXXXXXX and the Current XXXXXXXXXXXX Director told OCR that students should contact the Disability Services Office; however, the XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX told OCR that while she would prefer that the Disability Services Office be notified first, she typically only hears about accessibility concerns secondhand or thirdhand. OCR also noted that the Student Handbook encourages students to notify the Registrar’s Office. The Director of XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX told OCR that when she receives disability-related complaints, she tries to resolve them informally and, if unable to do so, she refers them to the XXXXX XXXXXXXXXXXX XXXXXXXX; however, the XXXXX XXXXXXXXXXXX XXXXXXXX informed OCR that she had not received any ADA complaints and neither had her predecessor. The XXXXX XXXXXXXXXXXX XXXXXXXX also mentioned that the College’s ADA Access Committee looks at complaints. She acknowledged that there have been communication issues, though various interviewees reported that the College’s ADA Access Committee and ADA Strategic Compliance Assessment Committee are working to bring together faculty, staff, and administrators across departments to address accessibility issues on campus. Likewise, the XXXXXXXXXXXX XXXXXXXX XXXXXXXXXXXX informed OCR that the College is in the process of drafting an online complaint form for raising accessibility concerns.

Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the College expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the College resulted in the College signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. 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.

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.

If you have any questions, you may contact Civil Rights Attorney Stephanie Leiter at (617) 289-0006 or by e-mail at Stephanie.Leiter@ed.gov.

Sincerely,

/s/

Abra Francois
Compliance Team Leader

Enclosure

cc: William Mitchell, Vice President for Administration and Chief Financial Officer;
XXXXXXXXX XXXXXXXXXXX, XXXXX XXXXXXXXXXXX to the Vice President for
Administration and Chief Financial Officer