



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

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March 25, 2014

Dr. Susan A. Cole
President
The Office of the President
Montclair State University
1 Normal Avenue
Montclair, New Jersey 07043

Re: Case No. 02-13-2429
Montclair State University

Dear Dr. Cole:

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 Montclair State University (the University). The complainant alleged that the University discriminated against individuals with disabilities, by moving the programs, activities, and services previously located in Morehead Hall to inaccessible buildings, namely Webster Hall and Stone Hall.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), 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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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 University is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504 and the ADA.

In its investigation, OCR interviewed the complainant and University staff and reviewed information the complainant and the University submitted. OCR also conducted onsite inspections of the University on February 19, March 4, 11, and 21, 2014.

The complainant alleged the University discriminated against individuals with disabilities, by moving the programs, activities, and services previously located in Morehead Hall to inaccessible buildings, namely Webster Hall and Stone Hall. Specifically, the complainant alleged that:

- the main entrance door's to Webster and Stone Halls are inaccessible to individuals with mobility impairments because they are too heavy, cannot be opened independently, and are not automated; and there are stairs leading to the main entrance of Stone Hall;
- the first floors of Webster and Stone Halls lack appropriate signage to identify specific rooms and offices;
- with the exception of the Disability Resource Center, office doorways of programs located on the first floor of Webster Hall are inaccessible to individuals with mobility impairments;
- the water fountain on the first floor of Webster Hall is inaccessible to individuals with mobility impairments; and
- essential student services are located on the upper floors of Webster and Stone Halls, although there are no elevators in either building.

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.

The University stated that it has temporarily relocated the programs and services previously housed in Morehead Hall to Webster and Stone Halls while it renovates Morehead Hall for use as a School of Communication and Media.¹

Webster and Stone Halls

OCR determined that Webster Hall was constructed in 1962. OCR determined that in June 2013, the University renovated the first floor of Webster Hall to allow access by persons with disabilities; renovations were completed on August 15, 2013. The University made the following alterations to make the programs on the first floor of the building accessible: (a) increased the width of office door openings; (b) added a suite entrance door from the hallway to the Disability Resource Center; (c) installed a ramp on the first floor and outside of the building; and (d) installed an automatic door opener to the main entrance of the building.

OCR determined that the University relocated the following programs and services to Webster Hall from Morehead Hall: Disability Resource Center, Student Academic Services, Center for Academic Development and Assessment, and Educational Opportunity Fund Programs (first

¹ The University stated that in three years or less, it will demolish Webster and Stone Halls and permanently relocate the programs and services in these buildings to College Hall, which also is undergoing renovations and will be accessible to individuals with disabilities.

floor);² Advising and Student Transitions, and Veteran and Military Services (second floor); Academic Success and Retention, Adult Programs and Transfer Programs (third floor).

OCR determined that Stone Hall was constructed in 1955. OCR determined that in June 2013, the University renovated the first floor of Stone Hall to allow access by persons with disabilities; and completed the renovations on August 15, 2013. The University renovated the first floor bathroom of Stone Hall to make it accessible to individuals with disabilities.

OCR determined that the University relocated the following programs from Morehead Hall to Stone Hall: Enrollment Management (first floor); Health Promotions (annex ground level); Service Learning, and Career Services (second floor).

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 Webster Halls’ first floor interior and exterior entrance doors and ramps; and Stone Hall’s exterior entrance doors and first floor designated accessible restroom are new construction, as defined by Section 504.³ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁴ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must be in compliance with the Uniform 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).⁵

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 unrenovated areas of Webster and Stone Halls are “existing facilities” under Section 504.⁶ 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.⁷ Accordingly, each program or activity operated in the unrenovated areas of the Webster Hall and Stone Hall buildings, when viewed in their entirety, must be readily accessible to individuals with disabilities. The regulation does not require a recipient to make structural changes to existing facilities. A recipient may comply through

² The Educational Opportunity Fund Programs are located on the first and third floors.

³ These facilities are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. §35.151.

⁴ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. §35.151.

⁵ 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 for Accessible Design. The University informed OCR that it adhered to the New Jersey Uniform Construction Code Barrier Free Requirements and ADAAG for the alterations to Webster and Stone Halls.

⁶ The remaining areas are also existing facilities 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.

⁷ The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

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.

Entrances to Webster and Stone Halls

The complainant alleged that Webster and Stone Halls lack appropriate signage indicating designated accessible entrances. The complainant also alleged that the main entrance doors to Webster and Stone Halls are inaccessible to individuals with mobility impairments because they are too heavy, cannot be opened independently, and are not automated; and there are stairs leading to the main entrance of Stone Hall.

OCR determined that the entrances to Webster and Stone Halls are new construction. The University designated the accessible entrance to Webster Hall as the main entrance, which is accessed via an exterior ramp. OCR determined that the University identified the main entrance and a side entrance to Stone Hall as the designated accessible entrances; both of these are located at ground level. During OCR's onsite inspection, OCR determined that the designated accessible entrances to Webster and Stone Halls displayed the appropriate signage with the International Symbol of Accessibility. OCR also determined that there are no stairs leading to either accessible entrance to Stone Hall. OCR further determined that in or around winter 2014, the University installed automatic door openers at the designated accessible entrances to Webster Hall and Stone Hall.⁸ OCR determined that the automatic door openers at the main entrances to Webster and Stone Halls were operable; however, the automatic door opener at the side entrance to Stone Hall was inoperable.

Therefore, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the designated accessible entrances to Webster and Stone Halls lacked the appropriate signage; the main entrance doors to Webster and Stone Halls are inaccessible to individuals with mobility impairments because they are too heavy, cannot be opened independently, and are not automated; or that there are stairs leading to the main entrance of Stone Hall. However, OCR identified a compliance concern regarding the automatic door opener at the side entrance to Stone Hall, as outlined in Appendix A, attached.

During OCR's onsite inspection, OCR also determined that the walkway in front of Webster Hall, which leads to the parking lot, including the curb, had numerous cracks and changes of level measuring 1 to 2 inches.⁹ OCR identified this as a compliance concern, as outlined in Appendix A, attached.

⁸ Under the 2010 ADA Standards, automatic door openers are not required; however, if they are installed, they must meet the specified requirements.

⁹ OCR also determined that the University provides shuttle service for the campus to all employees, students, and visitors, including shuttle service reserved solely for individuals with disabilities. Information about the University's shuttle service is located on the University's website.

First Floors of Webster and Stone Halls

The complainant alleged that the first floors of Webster and Stone Halls lacked appropriate signage to identify specific rooms and offices; namely that the meeting rooms and program offices on the first floor of Webster and Stone Halls lacked signage with raised Braille.

OCR determined that as the first floors of Webster and Stone Halls are new construction, they are required to have appropriate signage to identify permanent rooms and spaces, including offices. OCR identified compliance concerns with respect to the signage of the rooms and spaces, as outlined in Appendix A, attached.

With respect to the office doorways on the first floor of Webster Hall, the complainant alleged that with the exception of the Disability Resource Center, the office doorways of the Student Academic Services, Center for Academic Development and Assessment, and Educational Opportunity Fund Programs, located on the first floor of Webster Hall, are not sufficiently wide for individuals with mobility impairments. OCR determined that office doorways were sufficiently wide, and therefore, could not substantiate the complainant's allegation.

With respect to the complainant's allegation that the water fountain located on the first floor of Webster Hall is inaccessible to individuals with mobility impairments, OCR identified compliance concerns with the spout height and location, and lever of the water fountain, as outlined in Appendix A, attached.

During the course of its onsite inspection, OCR found additional compliance concerns in Webster Hall, namely with respect to the toilet paper and seat cover dispensers in the first floor designated accessible restroom. OCR also found the following additional compliance concerns in Stone Hall: door force of the Program Accessibility Meeting Room (Room 140); door force of the designated accessible bathroom; door force of the interior door leading to the accessible bathroom; and soap dispenser location in the designated accessible bathroom on the first floor. The compliance concerns are outlined in Appendix A, attached.

Upper Floors of Webster and Stone Halls

With respect to the upper floors of Webster and Stone Halls, the complainant alleged that essential student services are located on the upper floors of Webster and Stone Halls although there are no elevators in either building.

OCR determined that the University relocated the following programs to the upper floors of Webster Hall: Advising and Student Transitions and Veteran and Military Services (second floor); and Academic Success and Retention, Adult Programs, and Transfer Programs (third floor). The University relocated its Service Learning and Career Services programs to the second floor of Stone Hall. OCR determined that the upper floors of Webster and Stone Halls are "existing facilities" as defined by the regulations implementing Section 504 and the ADA.

The University informed OCR that it has implemented a system by which disabled students could have access to all programs and services not located on the first floors of Webster and

Stone Halls. The University stated that it created two meeting rooms on the first floor of Webster Hall and two meeting rooms on the first floor of Stone Hall, all of which are accessible to individuals with mobility impairments. The University advised OCR that program service providers in both Webster or Stone Halls are required to meet with individuals with mobility impairments at the front desk (located on the first floor) and provide services in one of the accessible rooms, also located on the first floor. Services are provided to students on a walk-in basis or by scheduling an appointment with the specific program office. The University stations staff at the front desks of Webster and Stone Halls during business hours to summon program service providers to the first floor when necessary. The University stated that staff members at the front desk also direct individuals with disabilities seeking access to programs and services located in Webster and Stone Halls to the Director of the Disability Resource Center, as necessary. Accordingly, OCR determined that the University has an alternate plan for providing individuals with mobility impairments with access to the programs located on the upper floors of Webster and Stone Halls.

On March 25, 2014, the University agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the University fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the University'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 University 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, 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 Stacy Bobbitt, Compliance Team Investigator, at (646) 428-3823 or stacy.bobbitt@ed.gov; Jeanette Tejada Bustos, Compliance Team Attorney, at (646) 428-3777 or jeanette.tejadabustos@ed.gov; or [Nadja Allen Gill, Compliance Team Leader, at \(646\) 428-3801 or nadja.r.allen.gill@ed.gov](mailto:nadja.allen.gill@ed.gov).

Sincerely,

/s

Timothy C. J. Blanchard

Encl.

cc: XXXXXXXXXXXX, Esq.
XXXXXXXXXXXX, Esq.

APPENDIX A

Webster Hall

Building Component	Exterior route from Webster Hall to Parking Lot #17
Accessibility Issues	<ul style="list-style-type: none"> The walkway in front of Webster Hall and leading to the parking lot, including curb, had numerous cracks and changes of level measuring 1 to 2". [Floor and ground surfaces shall be stable, firm, and slip resistant. Changes in level between 1/4 inch high minimum and 1/2" high maximum shall be beveled with a slope not steeper than 1:2. ADA 2010 Standards 302.1; 303.3]

Building Component	Signage of first floor rooms and offices
Accessibility Issues	<ul style="list-style-type: none"> First floor meeting rooms and offices lacked appropriate signage. [Interior signs identifying permanent rooms and spaces, such as restrooms, room numbers, and room names, shall be provided. Tactile text descriptors are required for pictograms that are provided to label or identify a permanent room or space. Where both visual and tactile characters are required, either one sign with both visual and tactile characters, or two separate signs, one with visual, and one with tactile characters, shall be provided. Raised characters shall also be duplicated in braille. ADA 2010 Standards 216.2; 703.1; 703.2; 703.3; and 703.5]

Building Component	Drinking Fountain in first Floor Corridor
Accessibility Issues	<ul style="list-style-type: none"> Spout height was 43" from the finished floor or ground. [Spout height required is 36" maximum above the floor. 2010 Standards 602.4] Spout location was 13" from the vertical support and 3" from the front edge of the unit. [Spout location required is 15" minimum from the vertical support and 5" maximum from the front edge of the unit. ADA 2010 Standards 602.5] Drinking fountain was inoperable, as water flow was not present in the unit. Required that the spout shall provide a flow of water 4" high minimum and shall be located 5" maximum from the front on the unit. ADA 2010 Standards 602.6] Drinking fountain lever was inoperable. [Operable parts shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. ADA 2010 Standards 309.4]

Building Component	Accessible Bathroom
Accessibility Issues	<ul style="list-style-type: none"> • Toilet paper dispenser to front centerline of toilet is 16". [Toilet paper dispenser shall be 7 to 9" from front of the toilet to the centerline of the dispenser. ADA 2010 Standards 604.7] • Seat cover dispenser is 49" from the floor. [Toilet compartment accessories should be mounted within the reach range established in the 2010 ADA Standard, which mandates that the operable mechanism of the accessory be mounted no lower than 15" and no higher than 48". ADA 2010 Standards 308; 604]

Stone Hall

Building Component	Exterior side entrance
Accessibility Issues	<ul style="list-style-type: none"> • Automatic door opener not operable. [ADA 2010 Standards 404.3]

Building Component	Program Accessibility Meeting Room (Room 140)
Accessibility Issues	<ul style="list-style-type: none"> • Door force ranged between 20-25 lbs. [5lbs maximum force for interior doors. ADA 2010 Standards 404.2.9]

Building Component	Accessible Bathroom on first Floor
Accessibility Issues	<ul style="list-style-type: none"> • Soap dispenser located 53" above floor. [Operable parts of soap dispenser should be no higher than 44" if above lavatory or counter; no less than 20" and no greater than 25" deep; 48" above floor if above lavatory or if no obstruction. 2010 Standards – 308; 603] • Door force ranged between 25-30 lbs. [5lbs maximum force for interior doors. ADA 2010 Standards 404.2.9]

Building Component	Interior Door Leading to first Floor Accessible Bathroom
Accessibility Issues	<ul style="list-style-type: none"> • Door force 20 lbs. Automatic door opener inoperable. [5lbs maximum force for interior doors. ADA 2010 Standards 404.2.9; 404.3]