



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

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February 25, 2016

Marion Terenzio, Ph.D.
President
SUNY College of Agriculture & Technology at Cobleskill
State Route 7
Cobleskill, New York 12043

Re: Case No. 02-15-2391
SUNY College of Agriculture & Technology at Cobleskill

Dear Dr. Terenzio:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the SUNY College of Agriculture & Technology at Cobleskill (the College). The complainant alleged that the parking for the College's Wheeler Hall is inaccessible to individuals with disabilities because it lacks the required number of designated accessible parking spaces and the accessible parking spaces are not located on the shortest accessible route of travel to an accessible building entrance (Allegation 1); the access aisles adjacent to accessible parking spaces are not on level ground (Allegation 2); and, the accessible route from the accessible parking to the accessible building entrance is steeply sloped (Allegation 3).

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

OCR interviewed the complainant during the course of the investigation. OCR also reviewed information that the College and the complainant submitted. On December 3, 2015, OCR conducted an on-site inspection of the parking lots serving Wheeler Hall, and of the exterior accessible route to the accessible entrance for Wheeler Hall. OCR made the following determinations.

The complainant informed OCR that XXX is XXXXXXXXXXXXXXXXXXXX and uses Wheeler Hall on a XXXXXXXX XXXXX. 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 College informed OCR that Wheeler Hall, which currently houses science and technology classes/laboratories, was built in 1964; and, a structural addition containing additional laboratories and classrooms was constructed in 2011. The College further stated that the existing building (but not the structural addition) was renovated in 2012.¹

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.” Further, under the regulation implementing the ADA, at 28 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered “new construction.” Accordingly, OCR determined that Wheeler Hall is new construction, as defined by the regulations implementing Section 504 and the ADA. The regulation implementing Section 504, at 34 C.F.R. § 104.23(a), and the regulation implementing the ADA, at 28 C.F.R. § 35.151, require that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, 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) or 2010 ADA Standards for Accessible Design (2010 ADA Standards). 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.²

With respect to Allegation 1, the complainant alleged that the parking for the College’s Wheeler Hall is inaccessible to individuals with disabilities because it lacks the required number of designated accessible parking spaces, and the accessible parking spaces are not located on the shortest accessible route of travel to an accessible building entrance. In support of XXX allegation, the complainant stated that there are many more parking spaces that are not designated accessible and located closer to Wheeler Hall than spaces that are designated accessible.

¹ The renovations to the existing building included the replacement of the roof and windows; overall general “rehabilitation” of the space, including classrooms and laboratories; the replacement of the entire heating system; and the introduction of an air conditioning system. Wheeler Hall contains three levels; a Ground Level, First Level and Second Level. OCR determined that once an individual is inside the building at the Ground Level, Levels 1 and 2 are accessible via an elevator.

² The College informed OCR that it adhered to the 2010 ADA Standards during renovations.

The College informed OCR that none of the parking lots at the College are designated for any particular building. OCR determined that there are two parking lots located nearest to Wheeler Hall, which were both constructed in 1964 and modified in 2012 (Parking Lots 1 and 2).³ Wheeler Hall has three accessible entrances. The primary accessible entrance is located on the ground level, in the front of the building, nearest to Parking Lots 1 and 2. The second and third accessible entrances are located on the first level, on the rear and side of the building; they are used in conjunction with a pedestrian walkway to move between adjacent buildings.

The College informed OCR that all parking lots in the central area of campus and immediately around classroom and administrative buildings, including Parking Lots 1 and 2, are designated for faculty/staff use only; and, faculty/staff are required to have a generic parking decal in order to park in these parking lots.⁴ The College stated, however, that individuals with disabilities – including any faculty/staff, students, and visitors – are permitted to use the accessible parking spots in any parking lots on campus, including lots that are otherwise designated for faculty/staff parking, provided that they display a parking permit for persons with disabilities. Individuals with disabilities are not otherwise required to have a generic parking decal to use the accessible parking spots on campus.⁵

Section 208.2 of the 2010 ADA Standards requires 1 accessible parking space for every 25 parking spaces. Pursuant to Section 208.2 of the 2010 ADA Standards, where more than one parking lot is provided at a site, the number of accessible spaces is to be calculated according to the number of spaces required for each parking lot. Pursuant to Exception 2 of Section 208.3.1 of the 2010 ADA Standards, accessible parking spaces may be located in different parking lots if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance. Pursuant to Section 208.3.1 of the 2010 ADA Standards, accessible parking spaces that serve a particular building or facility shall be located on the shortest accessible route from parking to an accessible entrance.

OCR determined that Parking Lot 1 is located in front of the ground level accessible entrance to Wheeler Hall and contains five (5) parking spaces, two (2) of which are designated accessible. OCR determined that Parking Lot 2 runs horizontally along the side of Wheeler Hall, and contains nineteen (19) parking spaces; none of these spaces are designated accessible. There is no accessible route from Parking Lot 2 to the accessible entrances at Wheeler Hall. Accordingly, Parking Lot 2 cannot serve as accessible parking for Wheeler Hall. OCR's inspection of Parking Lot 1 and Parking Lot 2 confirmed that the location of the accessible parking spaces in Parking Lot 1 provide greater accessibility in terms of distance from the accessible entrance to Wheeler Hall than would be provided by locating any such spaces in Parking Lot 2. As such, OCR determined that the placement of the accessible spaces in Parking Lot 1 to service both parking lots and having no designated accessible spaces in Parking Lot 2 was permissible under the regulations.

³ The modifications consisted of repaving the accessible parking spaces and the road adjacent to the main parking lot for Wheeler Hall, and repaving and repainting the remaining spaces that are not designated accessible.

⁴ The College stated that there are other parking lots located on the perimeter of campus that are designated for students, as well as visitors. With respect to the student-designated parking lots, students are also required to have a generic parking decal.

⁵ The College also stated that for individuals with short-term/temporary disabilities, it will issue a temporary tag, typically for a two-week period.

OCR determined that Parking Lot 1 and Parking Lot 2, together contain a total of twenty-four (24) parking spaces, two (2) of which (Parking Space A and Parking Space B) are designated accessible. Parking Space A and Parking Space B are both located within Parking Lot 1, which is directly in front of the accessible (Ground Level) entrance to Wheeler Hall, and are closest to the accessible route to the accessible (Ground Level) entrance. Therefore, OCR determined that Parking Lot 1 and Parking Lot 2 have a sufficient number of accessible parking spaces, pursuant to the 2010 ADA Standards; and, meet 2010 ADA Standards regarding location closest to the accessible route to the accessible entrance. OCR also determined that because Parking Lot 1 has a sufficient number of accessible parking spaces, pursuant to the 2010 ADA Standards, to account for the total number of parking spaces contained within Parking Lot 1 and Parking Lot 2 combined, the College is permitted to have all accessible parking spaces located within Parking Lot 1, directly in front of the accessible (Ground Level) entrance to Wheeler Hall.

The 2010 ADA Standards require that accessible parking spaces contain signage identifying the space as accessible; and, that such signage be 60 inches minimum above the ground. OCR determined that Parking Space A and Parking Space B had such signage; therefore, these spaces comply with the 2010 ADA Standards.

Accordingly, OCR determined that there was insufficient evidence to substantiate the complainant's allegation that the parking for the College's Wheeler Hall is inaccessible to individuals with disabilities because it lacks the required number of designated accessible parking spaces and the accessible parking spaces are not located on the shortest accessible route of travel to an accessible building entrance. Therefore, OCR will take no further action regarding Allegation 1.

With respect to Allegation 2, the complainant alleged that the parking for the College's Wheeler Hall is inaccessible to individuals with disabilities because the access aisles adjacent to accessible parking spaces are not on level ground. Additionally, the complainant alleged that the accessible parking spaces have sewer grate covers with large holes/openings located within them that could cause a mobility-impaired person to catch his/her cane, crutch, or walker.

The 2010 ADA Standards require that accessible parking spaces be at least 96 inches wide minimum, as measured from the centerline of the marked lines. OCR determined that both Parking Space A and Parking Space B were sufficiently wide. The 2010 ADA Standards also require that access aisles adjacent to accessible spaces be 60 inches wide minimum, as measured from the centerline of the marked lines. OCR determined that the shared access aisle for Parking Space A and Parking Space B was sufficiently wide to comply with the 2010 ADA Standards. Therefore, OCR determined that the width of Parking Space A and Parking Space B, as well as their shared access aisle, comply with the 2010 ADA Standards.

The 2010 ADA Standards require that openings in floor or ground surfaces shall not allow passage of a sphere more than ½ inch (13 millimeters) diameter subject to certain exceptions; however, none of the exceptions listed in the 2010 ADA Standards are applicable here. In addition, elongated openings shall be placed so that the long dimension is perpendicular to the dominant direction of travel.

OCR determined that Parking Lot 1 contained two sewer (2) grates, both of which are located in Parking Space B. Sewer Grate 1 is rectangular in shape and is located on the driver's side of Parking Space B. The overall dimensions of Sewer Grate 1 are thirty (30) inches long (horizontal to the curb) and twenty-two (22) inches wide. Sewer Grate 1 contains numerous rectangular holes in the grate, measuring three (3) inches long and two (2) inches wide. Sewer Grate 2 is circular in shape and is located on the driver's side of Parking Space B, closer to Wheeler Hall. The overall dimensions of Sewer Grate 2 are twenty-seven and a half (27.5) inches in diameter. Sewer Grate 2 contains numerous rectangular holes in the grate measuring six (6) inches long and one and a half (1.5) inches wide. Therefore, OCR determined that the dimensions of the holes/openings contained within Sewer Grate 1 and Sewer Grate 2 exceed the allowable measurements for floor/ground openings, pursuant to the 2010 ADA Standards.⁶ Accordingly, the College is required to make structural changes consistent with the ADA 2010 standards to address these accessibility concerns, as noted in Appendix A.

With respect to Allegation 3, the complainant alleged that the parking for the College's Wheeler Hall is inaccessible to individuals with disabilities because the accessible route from the accessible parking to the accessible building entrance is steeply sloped. The complainant stated that when XXX parks in either Parking Lot 2 or the parking lot that is located directly behind Parking Lot 1 (Parking Lot 3), XXX has difficulty walking up the hill to get to the accessible (Ground Level) entrance to Wheeler Hall. In addition, the complainant stated that when XXX parks in a parking lot that is near the rear of Wheeler Hall and adjacent to Alumni Hall (Parking Lot 4)⁷, XXX has difficulty traversing the stairs to access the accessible (Ground Level and Rear First Level) entrances of Wheeler Hall. The complainant also stated that XXX has difficulty walking around the pathway/ramp that leads to the accessible (Side First Level) entrance of Wheeler Hall. The complainant stated that weather conditions compound the difficulty of these situations because the College does not always remove the snow from the stairs.

OCR determined that Parking Lots 3 and 4 are not located closest to Wheeler Hall and could not reasonably serve as parking intended for Wheeler Hall. Additionally, as stated above, OCR determined that all accessible parking intended for Wheeler Hall is located in Parking Lot 1. Accordingly, OCR inspected the exterior route from Parking Lot 1 to the accessible (Ground Level) entrance of Wheeler Hall.

The 2010 ADA Standards require that floor and ground walking surfaces be stable, firm, and slip resistant, and that any changes in level between $\frac{1}{4}$ and $\frac{1}{2}$ inch shall be beveled with a running slope not steeper than 1:20 (5%). In addition, the cross slope of walking surfaces shall not be steeper than 1:48 (2.1%).

OCR determined that the accessible route leading from Parking Lot 1 to the accessible (Ground Level) entrance to Wheeler Hall was smooth and exhibited no cracking; and it was stable, firm, and slip resistant. The accessible route is broken up into two sections by the driving area into the accessible spaces. From the accessible parking spaces, the first section of the accessible route leads to a curb cut on a sidewalk, to another curb cut; an individual then needs to cross the driving area. The second section of the accessible route begins on the other side of the driving

⁶ The ground surfaces in the access aisles were otherwise level and free of obstruction.

⁷ OCR determined that Parking Lot 4 contains three (3) designated accessible parking spaces.

area and leads to the accessible entrance. OCR determined that the running slope at three different points from the accessible (Ground Level) entrance door to the driving area measured 0.9%, 1.8%, and 3.2%. However, OCR determined that the cross slope at three different points measured 6.5%, 5.3%, and 8.9%.

Therefore, OCR determined that cross slope of the accessible route leading from the accessible parking spaces to the Ground Level accessible entrance to Wheeler Hall exceeded the allowable measurements pursuant to the 2010 ADA Standards. Accordingly, the College is required to make structural changes consistent with the ADA 2010 standards to address these accessibility concerns, as noted in Appendix A.

On February 19, 2016, the College entered into a Resolution Agreement (attached) with OCR to resolve compliance issues, as described above and cited in Appendix A, pursuant to Section 303 of the Case Processing Manual. OCR will monitor the implementation of the enclosed resolution agreement.

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 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 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 regarding OCR's determination, please contact Letisha Morgan, Senior Compliance Team Investigator, at (646) 428-3827 or letisha.morgan@ed.gov; Ronald Scott, Compliance Team Attorney, at (646) 428-3820 or ronald.scott@ed.gov; or, Félice Bowen, Compliance Team Leader, at (646) 428-3806 or felice.bowen@ed.gov.

Very truly yours,

/s/

Timothy C.J. Blanchard

Encl.

cc: XXXXXXXXX XXXXXXXXXX, Esq.

Appendix A

- **Any structural changes must comply with current accessibility standards; accordingly, 2010 ADA Standards are quoted below.**

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|----------------------|---|
| Component | Ground Level Accessible Exterior Route Leading from the Accessible Parking Spaces to the Ground Level Accessible Entrance of Wheeler Hall |
| Accessibility Issues | <ul style="list-style-type: none"> ▪ Cross Slope = 6.5%; 5.3%; and 8.9% (measured at three different points from the front entrance door to the driving area). [2010 ADA Standards 403.3, maximum cross slope of walking surfaces shall not be steeper than 1:48 gradient (less than 2.1%)]. |

| | |
|----------------------|---|
| Component | Accessible Parking Spaces in Parking Lot 1 |
| Accessibility Issues | <ul style="list-style-type: none"> ▪ There are two sewer grates located on the driver’s side of Space B in Parking Lot 1. Sewer Grate 1: contained numerous rectangular holes in the grate measuring three (3) inches long and two (2) inches wide. Sewer Grate 2: contained numerous rectangular holes in the grate measuring six (6) inches long and one and a half (1.5) inches wide. [2010 ADA Standards 302.3, maximum openings in floor or ground surfaces shall not allow passage of a sphere more than ½ inch (13 millimeters)]. |