



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

July 26, 2019

Félix V. Matos Rodríguez
Chancellor
City University of New York
205 East 42nd Street
New York, New York 10017

Re: Case No. 02-17-2075
City University of New York – College of Staten Island

Dear Chancellor Rodríguez:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding the above-referenced complaint filed against the City University of New York – College of Staten Island (the College). The complainant alleged that the exterior routes between the College's Campus Center (Building 1), the Department of Business 3N building (Building 2)¹, and the Engineering Technologies West 4N building (Building 3), and their respective designated parking areas, are inaccessible to individuals with disabilities.

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.

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

¹ Based on the photographs that the complainant provided to OCR during its evaluation of the complaint, OCR identified this building in its notification letter to the College as the Engineering Technologies West 3N building; however, OCR determined that Building 2 is the Department of Business building.

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.

In its investigation, OCR interviewed College staff and reviewed documentation that the complainant and the College provided. Additionally, OCR conducted an on-site inspection of the exterior accessible routes between Buildings 1, 2 and 3 (collectively, the Buildings) and their respective parking areas. OCR made the following determinations.

The College informed OCR that the exterior access routes between Building 1, Building 2, and Building 3 and their designated parking areas were constructed in December 1992, and resurfaced and/or otherwise altered in 1999. The College also altered its parking lots in July 2010. According to the College, it made no further alterations to these access routes or parking lots. The College informed OCR that the accessibility standard it used for the construction/renovation of the Buildings’ exterior access routes and the parking areas was the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

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 exterior access routes between the Buildings and their respective parking areas, as well as those parking areas, are new construction under the regulation implementing Section 504.²

The regulation implementing Section 504, at 34 C.F.R. § 104.23(a), requires 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(c), 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 ADAAG or the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

The complainant alleged that the exterior routes between Building 1, Building 2, and Building 3 and their respective parking areas are inaccessible to individuals with disabilities. Specifically, the complainant alleged that the surfaces of the access routes were cracked and uneven, and difficult to navigate for an individual with a disability.

Exterior route between Building 1 and Parking Lot 4

Building 1 houses a cafeteria, bookstore, radio station and study center; it is served by Parking Lot 4. OCR inspected the accessible route between the two designated accessible entrances to Building 1 and Parking Lot 4. The designated accessible entrances to Building 1 were located at the front and at the rear of the building. Both accessible entrances offered automatic doors, which met ADAAG Section 4.13 with regard to hardware, threshold, and sufficient clear width. Additionally,

² Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, are considered “new construction.” The access routes and parking lots also are new construction under the ADA.

the ground area at each entrance was level and clear and afforded sufficient maneuvering clearance, consistent with ADAAG Section 4.5.1.

OCR determined that the accessible routes to both entrances to Building 1 met ADAAG Section 4.3 with respect to width. The access route is more than 95” wide; ADAAG requires a minimum width of 36.” However, OCR identified a compliance concern with the access route from the part of Parking Lot 4 that is closest to the rear accessible entrance to Building 1, which had numerous divots and cracks adjacent to the accessible parking spaces and on the accessible route. ADAAG Section 4.5.1 requires that floor and ground surfaces be stable, firm, and slip resistant. OCR also identified a compliance concern because Parking Lot 4 had curbs that were over 1” high leading to the accessible route, but did not have curb ramps. ADAAG Section 4.7.1 requires that curb ramps be provided whenever an accessible route crosses a curb.

Exterior Route between Building 2 and Parking Lot 1

Building 2 houses the School of Business classrooms and offices; it is served by Parking Lot 1. OCR inspected the accessible route between the designated accessible entrance to Building 2 and Parking Lot 1. There are two double doors at the main entrance to Building 2, one of which has been designated as the accessible entrance. The accessible entrance offered automatic doors, which met ADAAG Section 4.13 with regard to hardware, threshold, and sufficient clear width. However, OCR identified a compliance concern because there is a very deep and long crack at the front of the accessible entrance, which a mobility-impaired individual would have difficulty navigating. ADAAG Section 4.5.1 requires that floor and ground surfaces be stable, firm, and slip resistant. OCR determined that the accessible route to Building 2 from Parking Lot 1 up to the area just before the accessible entrance was stable, firm, and slip resistant and met ADAAG Section 4.5.1. The access route is more than 142” wide, and therefore complies with ADAAG Section 4.3, which requires a minimum width of 36”. OCR identified a compliance concern because Parking Lot 1 had curbs that were over 1” high leading to the accessible route, but did not have curb ramps. ADAAG Section 4.7.1 requires that curb ramps be provided whenever an accessible route crosses a curb.

Exterior route between Building 3 and Parking Lot 1

Building 3 houses the engineering technology classrooms and offices; it is served by Parking Lot 1. OCR inspected the accessible route between the designated accessible entrance to Building 3 and Parking Lot 1. Building 3’s designated accessible entrance has an automatic door, which met ADAAG Section 4.13 with regard to hardware, threshold, and sufficient clear width. Building 3 has a ramp, installed in 1992-1993, leading to the accessible entrance, whose surface was smooth, 60” wide, and offered two landings measuring 60” by 60”, and 70” by 72”, which meet the requirements of ADAAG at Sections 4.8.3 and 4.8.4. Additionally, the ramp’s landing area at the entrance was level and clear and more than 90” wide, which afforded sufficient maneuvering clearance, consistent with ADAAG Section 4.13.6. However, the ramp’s handrails were approximately 29” high, which was not compliant with ADAAG Section 4.8.5, which provides that handrails must be between 34” and 38” above the ramp’s surface. OCR determined that the accessible route between Building 3 and Parking Lot 1 was stable, firm, and slip resistant, consistent with ADAAG Section 4.5.1. The access route is more than 142” wide; and therefore

complies with ADAAG Section 4.3, which requires a minimum width of 36". As stated above, OCR also identified a compliance concern because Parking Lot 1 had curbs that were over 1" high leading to the accessible route, but did not have curb ramps. ADAAG Section 4.7.1 requires that curb ramps be provided whenever an accessible route crosses a curb.

On July 23, 2019, the College agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified above regarding the exterior accessible routes between the Buildings and Parking Lots 1 and 4. OCR will monitor the implementation of the resolution agreement.

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 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 individual may file a 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 that, 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 Tracey Beers, Senior Compliance Team Attorney, at (646) 428-3804 or Tracey.Beers@ed.gov; R. Colin Power, Compliance Team Attorney, at (646) 428-3832 or R.Colin.Power@ed.gov; or Anna Moretto Cramer, Compliance Team Leader, at (646) 428-3826 or Anna.Moretto.Cramer@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Hilary B. Klein, Esq. (by email)