

July 31, 2018

Nancy Kleniewski, Ph.D.
President
State University of New York at Oneonta
Office of the President
108 Ravine Parkway
Oneonta, New York 13820

Re: Case No. 02-18-2125
State University of New York at Oneonta

Dear President Kleniewski:

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 State University of New York at Oneonta (the College). The complainant alleged that the College discriminates on the basis of disability, because the following are inaccessible to students with disabilities: bathrooms on the second and third floors of Milne Library (Allegation 1);¹ the exterior doors to the dining hall in Hulbert Hall (Allegation 2);² and, doors located “every few feet throughout all hallways” in the Fine Arts Building (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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is 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 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 both Section 504 and the ADA.

¹ During OCR’s evaluation of the complaint, the complainant alleged that bathrooms on the second floor of Milne Library are inaccessible to students with disabilities. During OCR’s investigation, the complainant clarified that his allegation pertained to bathrooms on both the second and third floors of Milne Library.

² During OCR’s evaluation of the complaint, the complainant alleged that a door leading to the elevator in Hulbert Hall was inaccessible to students with disabilities. During OCR’s investigation, the complainant clarified that his allegation pertains to the exterior door to the dining hall in Hulbert Hall.

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.

During its investigation, OCR interviewed the complainant; and, reviewed information that the complainant, xxxxxxxxxx (the Student),³ and the College submitted. OCR made the following determinations.

Bathrooms on the Second and Third Floors of Milne Library

With respect to Allegation 1, the complainant alleged that the College discriminates on the basis of disability because the bathrooms on the second and third floors of Milne Library are not accessible to students with disabilities. Specifically, the complainant asserted that each such bathroom has two doors in a series without sufficient distance between the two doors; and, there is insufficient clearance around water closets and in toilet compartments.

OCR determined that Milne Library has a basement, main floor, second floor, and third floor. In addition to library services, Milne Library also houses the following services: Information and Technology Services, including the “basement technology commons”; Accessibility Resources; a coffee shop; the Department of Geography and Sustainability; and, beginning in fall 2018, the Center for Academic Development and Enrichment. The College also holds classes and some student, faculty, and staff meetings on the second and third floors of Milne Library.⁴ OCR determined that Milne Library was originally constructed in 1971. The second floor was renovated in 2018. The façade on the third floor was renovated in 2015; there have been no other renovations to the third floor.

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, OCR determined that the third floor bathrooms are “existing facilities” under Section 504.⁵ 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.⁶ Accordingly, each program or activity operated on the third floor of Milne Library, when viewed in its 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 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.

³ The Student is xxxxxxxxxxxxxxxxxxxxxx.

⁴ The College informed OCR that lectures and exhibits are also occasionally held in Milne Library.

⁵ The third floor bathrooms 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.

⁶ The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

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 second floor bathrooms are new construction, as defined by Section 504.⁷ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁸ Beginning on March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 ADA Standards).

The College acknowledged to OCR that the bathrooms on the second and the third floors of Milne Library are not accessible to individuals with disabilities. The College informed OCR that it intends to fully renovate the bathrooms on the second floor of Milne Library by January 2019, to ensure that the bathrooms are fully accessible to individuals with disabilities, in accordance with the 2010 ADA Standards. The College informed OCR that it also intends to renovate a unisex bathroom located on the third floor of Milne Library by August 22, 2018, to ensure that each program or activity offered on the third floor of Milne Library, when viewed in its entirety, is readily accessible to individuals with disabilities. On July 31, 2018, the College signed the enclosed resolution agreement to resolve Allegation 1. OCR will monitor the implementation of the resolution agreement.

Exterior Doors to Dining Hall in Hulbert Hall

With respect to Allegation 2, the complainant alleged that the College discriminates on the basis of disability because the exterior doors to the dining hall in Hulbert Hall are not accessible to students with disabilities. Specifically, the complainant asserted that the doors require too much force to open and do not have automatic or power-assisted door openers.

OCR determined that Hulbert Hall contains a six-story residence hall, a dining hall, the Outdoor Resource Center and an office for a representative of the Dormitory Authority of the State of New York. The dining hall is open to all students, regardless of residency in Hulbert Hall; however, students who do not reside in Hulbert Hall, xxxxxxxxxxxxxxxxxxxxxx, must enter the dining hall through a series of exterior double doors (the dining hall doors).⁹

The College acknowledged to OCR that the dining hall doors are not accessible to individuals with disabilities. The College informed OCR that it intends to install automatic door openers beside each set of the dining hall doors by August 22, 2018, to ensure that the doors are accessible to individuals with disabilities, in accordance with the 2010 ADA Standards.¹⁰ On

⁷ These facilities are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. § 35.151.

⁸ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

⁹ Residents of Hulbert Hall may access the non-dining hall portion of the building through two separate designated accessible entrances.

¹⁰ Pursuant to the 2010 ADA Standards, the maximum opening force for interior hinged doors is five pounds. The 2010 ADA Standards do not specify a maximum opening force for exterior hinged doors; however, designated accessible exterior doors should have the minimum opening force possible, and any door so heavy that it prevents entrance to a facility by individuals with disabilities may deny such individuals access to programs and activities offered within the facility.

July 31, 2018, the College signed the enclosed resolution agreement to resolve Allegation 2. OCR will monitor the implementation of the resolution agreement.

Doors in Hallways in Fine Arts Building

With respect to Allegation 3, the complainant alleged that that the College discriminates on the basis of disability because the doors located “every few feet throughout all hallways” in the Fine Arts Building are not accessible to students with disabilities. Specifically, the complainant asserted that the doors are “hard to open” and “[n]one of these doors have buttons or swipers for [individuals with disabilities] to open them with ease when needed.”

OCR determined that the Fine Arts Building is an instructional and performance space used by the College’s Theater, Music and Studio/Computer Arts Departments. The following programs and activities are held in the Fine Arts Building: classroom instruction; music recording and performance; drama/dance rehearsal and performance; art gallery events; and, art production.¹¹

There are 17 sets of doors located in the hallways of the Fine Arts Building: two on the basement level; 12 on the first floor; and, three on the second floor.¹² Seven of the 12 sets of doors located in hallways on the first floor are on designated accessible routes, and all three sets of doors located in hallways on the second floor are on designated accessible routes; all of these doors are generally kept closed. The College informed OCR that the force required to open these doors ranges from three to 25 pounds. Specifically, of the seven sets of doors on the accessible route on the first floor, one requires three pounds of force to open; one requires four pounds; four require five pounds; and, one requires seven pounds. The three sets of doors on the second floor require nine, 12, and 25 pounds of force to open, respectively. Therefore, according to the College, four sets of interior doors located in hallways on designated accessible routes in the Fine Arts Building require opening force that exceeds the limit set forth in UFAS, ADAAG and the 2010 ADA Standards.

The College informed OCR that it intends to install automatic door openers for each set of interior hallway doors located along a designated accessible route within the Fine Arts Building by August 22, 2018, to ensure that these doors are accessible to individuals with disabilities, in accordance with the 2010 ADA Standards.¹³ On July 31, 2018, the College signed the enclosed resolution agreement to resolve Allegation 3. OCR will monitor the implementation of the 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

¹¹ Many programs and activities held in the Fine Arts Building are open to the general public.

¹² There are no doors located in hallways on the third floor of the Fine Arts Building.

¹³ In addition, with respect to the seven doors that are not on designated accessible routes, the College advised OCR that it is in the process of retaining an accessibility consultant to conduct an accessibility study during academic year 2018-2019, in order to develop a long-term transition plan for improved accessibility throughout the entire campus, including the Fine Arts Building. The College stated that it will prioritize further necessary renovations to the hallway doors in the Fine Arts Building in accordance with the consultant’s recommendations, and that it will secure the funding needed to complete such renovations as advised.

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 questions regarding OCR's determinations, please contact Lauren Numeroff, Compliance Team Attorney, at (646) 428-3895 or lauren.numeroff@ed.gov; or Tiffany Lyttle, Compliance Team Attorney, at (646) 428-3754 or tiffany.lyttle@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

cc: Catherine Tretheway, Esq.

Encl.