



**UNITED STATES DEPARTMENT OF EDUCATION**  
OFFICE FOR CIVIL RIGHTS  
32 OLD SLIP, 26<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10005

**TIMOTHY C. J. BLANCHARD**  
DIRECTOR  
NEW YORK OFFICE

August 28, 2019

Sent by email only to [valicea@boricuacollege.edu](mailto:valicea@boricuacollege.edu)

Victor G. Alicea, Ph.D.  
President  
Boricua College  
3755 Broadway  
New York, New York 10032

Re: Case No. 02-19-2134  
Boricua College

Dear Dr. Alicea:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against Boricua College (the College). The complainant alleged that the College discriminates on the basis of disability because there is no accessible route for individuals with mobility impairments to access the second and third floors of the Graham Avenue building (the building) of the College's Brooklyn campus.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794 *et seq.*, 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). The College is a post-secondary institution that is a recipient of financial assistance from the Department. Therefore, OCR has jurisdictional authority to investigate this complaint under Section 504.

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.”

In its investigation, OCR reviewed information that the complainant and the College submitted. OCR also interviewed the complainant, College personnel, and an architect who the College has retained to design the plan for alterations to the first floor and basement of the building. In addition, OCR conducted an on-site inspection of the building. OCR made the following determinations.

The College is a private co-educational college with three campuses located throughout New York City in Brooklyn, Manhattan, and the Bronx. The College offers various academic programs, including associate, bachelor's, and master's degrees. The College offers all courses and programs at each location, with the exception of the master's degree program, which is not offered at the Manhattan location.

The complainant alleged that the College discriminates on the basis of disability because there is no accessible route for individuals with mobility impairments to access the second and third floors of the building. OCR determined that the College occupies all floors of the building, which is a four-story facility located at 9 Graham Avenue, Brooklyn, New York. The College informed OCR that the base work for the building, which includes the facility's core and shell, was completed in 1931. The College began to occupy the third floor in 1974 and the second floor in 1976; and, in 1980, the College purchased the entire building. Although the College owns the entire building, it has historically rented out the majority of the first floor to various tenants; and to date, at least one tenant occupies space on the first floor. The College stated that it has re-designed the office spaces on the second and third floors, but it has not made any structural change to these floors since purchasing the building in 1980.

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," and before this date as "existing facilities." Accordingly, OCR determined that the building is an existing facility under the regulation implementing Section 504. The regulation implementing Section 504, at 34 C.F.R. § 104.22, 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. The regulation implementing Section 504 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. In such a case, the regulation implementing Section 504, at 34 C.F.R. § 104.23, would apply with regard to the accessibility standards applicable to the structural changes and alterations.

OCR visited each floor of the building during its on-site inspection. The first floor of the building is currently used for administrative purposes; it houses the receptionist, the registrar, and the financial aid office. The second floor of the building currently houses colloquium classrooms,<sup>1</sup> administrative offices, and professors' offices. The third floor houses the College's library, additional professors' offices, classrooms, and additional computer workspaces. A portion of the building's basement houses biology laboratories and a computer lab.<sup>2</sup> Currently, the building has no elevator or lift. Therefore, using stairs is the only way to access the basement, second, and third floors; the areas of the building that are at issue in the complaint.

The College informed OCR that due to existing office locations and space limitations, it is not possible to readily move the programs and activities held on the second and third floors to the first floor. Furthermore, the College asserted that it is currently unable to relocate the biology lab and computer

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<sup>1</sup> Colloquium classrooms are conference rooms that professors use to meet with students individually or in small groups.

<sup>2</sup> The other portion of the basement is currently under construction.

lab to the first floor due to space constraints and the specific infrastructure needed to support both labs. Therefore, the College's practice is to inform students who have mobility impairments that prevent them from accessing the basement, second and third floors via the stairs that they may enroll in classes at the Manhattan or Bronx campuses, which the College asserts are fully accessible.<sup>3</sup> The College stated that the Manhattan campus was constructed in January 1990 and complies with the American National Standards Institute (ANSI) accessibility standards; and, the Bronx campus was constructed in February 2008 and complies with the ANSI and Americans with Disabilities Act Accessibility Guidelines (ADAAG).

OCR reviewed floor plans of the Manhattan and Bronx campuses, which indicate that each campus has an elevator and accessible bathroom facilities; however, OCR determined that the Manhattan and Bronx campuses are not located near the building;<sup>4</sup> and, the College does not provide transportation services to students or faculty needing to access these accessible locations. Therefore, OCR determined that the College's alternate plan does not ensure that students with mobility impairments have equivalent access to the programs and activities held in the basement, second, and third floors of the building. Accordingly, the College will need to develop an alternate plan to ensure that each program or activity conducted in the building, when viewed in its entirety, is readily accessible to individuals with disabilities; or make structural changes in accordance with the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards).<sup>5</sup>

During the course of OCR's investigation, the College informed OCR that it plans to renovate the building to make the first floor and basement accessible to individuals with mobility impairments. The College's Vice President for Academic Planning and Programming (vice president) informed OCR that the College plans to relocate the library from the third floor of the building to the basement; to construct accessible classrooms and bathrooms on the first floor; to install an accessible bathroom in the basement; and, to install a platform lift to provide access from the first floor to the basement. The College asserted that construction will begin in August 2019; and, anticipates that it will be completed in the fall of 2019.<sup>6</sup>

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<sup>3</sup> The vice president and Dean of Admissions (dean) stated that during academic year XXXX-XXXX, the College accommodated one student enrolled at the Brooklyn campus who was unable to access the second and third floors due to a XXXXXX XXX, by having the student's professors temporarily hold individual meetings with the student on the first floor of the building; however, the vice president and dean both stated that the College's general practice to provide alternate access would be for students to transfer to one of the College's accessible campuses. The vice president and dean stated that students needing access to accessible facilities mid-semester are permitted to transfer to either location without incurring any additional costs. OCR determined that information regarding the College's alternate plan to provide access to accessible facilities is not located on the College's website or in its course catalog.

<sup>4</sup> The Manhattan campus is located approximately 13 miles from the building in Brooklyn and is approximately an hour away from the building by public transportation. The Bronx campus is located approximately 12 miles away from the building and is approximately an hour and ten minutes away from the building by public transportation.

<sup>5</sup> As of March 15, 2012, the 2010 ADA Standards supersede the Uniform Federal Accessibility Standards (UFAS) and ADAAG for new construction or alteration of existing facilities.

<sup>6</sup> Specifically, the College stated that it plans to install an open common area and five classrooms on the first floor; with each classroom having a capacity for up to twenty students. In addition, two classrooms will have subdivisions providing for additional space. The College plans to install accessible bathrooms on the first floor as well. The College further stated that it is renovating the basement to include an open study lounge that will include the College's library, the computer and biology laboratories, and accessible individually-gendered bathrooms.

OCR determined that the planned alterations to the first floor and basement of the building are alterations as defined by Section 504. Therefore, these alterations must be designed to be readily accessible and usable by individuals with mobility impairments; and, comply with the 2010 ADA Standards. The architect the College retained informed OCR that his designs to alter the basement and first floor will comply with the 2010 ADA standards; and, he plans to install a platform lift to provide an accessible route from the first floor to the basement.

On August 22, 2019, the College signed the enclosed resolution agreement to remedy the compliance issues identified in this investigation. OCR will monitor the implementation of the agreement. Upon the College's satisfaction of the commitments made under the Agreement, OCR will close the case.

This letter should not be interpreted to address 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 a 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 Joy M. Purcell, Senior Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov); Jessica Daye, Compliance Team Investigator, at (646) 428-3812 or [jessica.daye@ed.gov](mailto:jessica.daye@ed.gov); or Félice Bowen, Compliance Team Leader, at (646) 428-3806 or [felice.bowen@ed.gov](mailto:felice.bowen@ed.gov).

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: XXXXXXXX XXXXXX