



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 16, 2020

Sent via email only to president.office@wagner.edu

Joel W. Martin, Ph.D.
President
Wagner College
One Campus Road
Staten Island, New York 10301

Re: Case No. 02-20-2105
Wagner College

Dear Dr. Martin:

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 Wagner College (the College). The Complainant alleged that the College discriminates on the basis of disability, because the following buildings or elements of the buildings are not accessible to individuals with disabilities: Union Hall (Allegation 1); Harborview Hall (Allegation 2); Towers Hall (Allegation 3); Cunard Hall (Allegation 4); the “Coffeehouse” located in the basement of Reynolds House (Allegation 5); and the Postal Center located in Campus Hall (Allegation 6).

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). The College 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.”

OCR interviewed the Complainant during its investigation. OCR also reviewed information that the Complainant and the College provided.

With respect to Allegation 1, the Complainant alleged that the College discriminates on the basis of disability, because Union Hall (Building 1) is not accessible to individuals with disabilities.

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Specifically, the Complainant alleged that Building 1 is not accessible because (a) it lacks an elevator and/or portions of Building 1 are accessible only by stairs; (b) the route from Foundation Hall to the designated accessible entrance to the dining hall in Building 1 is circuitous and not well-lit, and contains many hills and broken concrete; (c) the route from the designated accessible entrance to the dining hall in Building 1 to the designated accessible entrance to the classroom section of Building 1 is on a steep hill with broken concrete; (d) the self-serve food counters in the dining hall in Building 1 are “too high”; and (e) the restrooms in Building 1 are too small/narrow to accommodate wheelchairs.

The College informed OCR that Building 1 was originally constructed in 1969. OCR determined that renovations to the dining hall housed in Building 1 were completed in or around August 2013.¹ The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities.” 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.”² Accordingly, OCR determined that Building 1 is an “existing facility” and the dining hall located within Building 1 is “new construction” under Section 504.

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. Accordingly, each program or activity operated in Building 1, 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.

The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. Beginning on March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards).

The College informed OCR that Building 1 has three floors. The first floor houses the dining hall, dining services’ main office, farmer’s market, and kitchen programs. The second floor houses space used for classes; the Center for Leadership & Community Engagement; the Center for

¹ See <https://www.youtube.com/watch?v=isk2SZow5U4> (site last visited on July 21, 2020). The College informed OCR that the toilet rooms have not otherwise been altered or renovated since Building 1 was constructed in 1969; except that it installed grab bars in the toilet rooms located on the second and third floors of Building 1 within the last few years.

² Section 106.5 of the 2010 Americans with Disabilities Act Standards for Accessible Design defines an alteration as a change to a building or facility that affects or could affect the usability of the building or facility or portion thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting, or wallpapering, or changes to mechanical and electrical systems are not alterations unless these affect the usability of the building or facility.

Intercultural Advancement; the Holocaust Center; the Hillel Club; multicultural events and programs; commuter events and programs; and sorority events. The third floor houses Career Services; Disability Services; Academic Advising; the bookstore; events hosted by Campus Life;³ and the art gallery.

The College informed OCR that Building 1 has three entrances: (1) an entrance on the first floor; (2) an entrance on the second floor; and (3) the main entrance on the third floor.⁴ The College informed OCR that the main entrance to Building 1 on the third floor is not accessible to individuals with mobility impairments because it may be reached from the exterior only by stairs or a steep ramp.⁵ The College advised OCR that entrances on the first and second floors are accessible, but have not been designated as such.

With respect to Allegation 1(a), the Complainant alleged that Building 1 is not accessible to individuals with disabilities because it lacks an elevator and/or portions of Building 1 are accessible only by stairs. The College acknowledged that Building 1 does not have any elevators and that there are stairs within the building connecting all of the floors that must be navigated to get to a different floor from within Building 1. An individual could enter floors 1 or 2 through the accessible entrance; however, an individual would need to exit the building and enter through the accessible entrance at floors 1 or 2 to gain access to the other floor; or call Public Safety to transport the individual to the entrance for floor 3, which is up a steep hill.

With respect to Allegation 1(b), the Complainant alleged that the route from Foundation Hall to the designated accessible entrance to the dining hall in Building 1 (route 1) is inaccessible to individuals with disabilities because it is circuitous and not well-lit, and contains many hills and broken concrete. The College informed OCR that because Building 1 was built on steep terrain, it is technically infeasible to adjust the slope of route 1.

With respect to Allegation 1(c), the Complainant alleged that the route from the designated accessible entrance to the dining hall on floor 1 of Building 1 to the designated accessible entrance to the classroom section located on floor 2 of Building 1 (route 2) is inaccessible because it is on a steep hill with broken concrete. As stated previously, the College informed OCR that, in order to travel between floor 1 and floor 2 from within Building 1, an individual would need to navigate the stairs; and in order to travel between floor 1 and floor 2 on the exterior of Building 1, an individual would need to personally navigate or call Public Safety or navigate route 2. The College informed OCR that because Building 1 was built on steep terrain, it is technically infeasible to adjust the slope of route 2.

With respect to Allegation 1(d), the Complainant alleged that the dining hall in Building 1 is inaccessible to individuals with disabilities because the self-serve food counters are “too high.” As stated above, the College informed OCR that Building 1 was constructed in 1969; however,

³ Events hosted by Campus Life include, but are not limited to, study abroad fairs; sorority events; and read aloud events.

⁴ Building 1 was built on an elevated sloping surface.

⁵ The College informed OCR that the doorway to entrance 3 is otherwise accessible. Individuals with mobility impairments may call Public Safety and request assistance traveling around the College’s campus. An individual with a mobility impairment could use this service for assistance getting to the main entrance doorway of Building 1.

OCR determined that renovations to the dining hall housed in Building 1 were completed in or around August 2013; it is unclear when renovations were initiated. As stated above, OCR determined that the dining hall housed in Building 1 is new construction, as defined by the regulation implementing Section 504. All new construction or alterations of existing facilities that begins on or after September 15, 2010, but prior to March 15, 2012, must conform to the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 Standards), the Uniform Federal Accessibility Standards (UFAS) or standards that provide equivalent access. All new construction or alterations that begin on or after March 15, 2012, must conform to the 2010 ADA Standards. Section 4.32.4 of the 1991 Standards, Section 7.2 of the UFAS, and Section 902.3 of the 2010 ADA Standards require that the tops of dining surfaces shall be 28 inches (710 mm) minimum and 34 inches (865 mm) maximum above the finish floor or ground.⁶ The College indicated that, in an effort to mitigate the effects of COVID-19, it plans to permanently remove food from the self-serve counters, thus negating a need to use the counter.

With respect to Allegation 1(e), the Complainant alleged that the toilet rooms in Building 1 are inaccessible to individuals with disabilities, because the toilet rooms are too small/narrow to accommodate wheelchairs. The College informed OCR that there is one toilet room on each floor of Building 1. As stated previously, the College informed OCR that Building 1 was constructed in 1969; however, the College informed OCR that it installed grab bars in the toilet rooms located on the second and third floors of Building 1 within the last few years. Section 202.3 of the Guide to the 2010 ADA Standards (the Guide) published by the U.S. Access Board in cooperation with U.S. Department of Justice and U.S. Department of Transportation in response to the 2010 ADA Standards⁷ provides, in relevant part:

If alterations are limited only to elements in a room or space, then the [2010 ADA] [S]tandards apply only to the elements altered...[i]n a restroom project involving alterations to the toilet, grab bars, faucet controls, and mirror, the standards apply to these elements but not to those that remain unaltered. In more extensive projects where additional elements are altered, application of the standards is greater, commensurate with the scope of work.

OCR determined that installation of the grab bars in the toilet rooms located on the second and third floors of Building 1 constituted limited alterations to elements of the toilet rooms, which did not render the entire toilet rooms new construction as defined by Section 504. Accordingly, OCR determined that, absent further construction or alteration beyond installation of the grab bars after June 3, 1977, the toilet rooms located in Building 1 are existing facilities, as defined by Section 504.

With respect to Allegation 2, the Complainant alleged that Harborview Hall (Building 2) is not accessible to individuals with disabilities because it lacks an elevator and/or portions of Building 2 are accessible only by stairs. The College informed OCR that Building 2 was originally

⁶ Pursuant to Section 226.1 of the 2010 ADA Standards, where dining surfaces are provided for the consumption of food or drink, at least 5 percent of the seating spaces and standing spaces at the dining surfaces shall comply with Section 902 of the 2010 ADA Standards.

⁷ See <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards> (site last visited on July 31, 2020).

constructed in 1967; accordingly, absent construction or alteration after June 3, 1977, Building 2 is an existing facility under the regulation implementing Section 504. The College informed OCR that Building 2 has 15 floors, including a basement. The basement houses a laundry room; the first floor houses the Residential Education Central Office and the Gatehouse Lounge; and floors 2-15 house dormitories. The College informed OCR that the entrance to Building 2 is located on the first floor and is accessible. Further, the College advised OCR that Building 2 has an elevator that provides access to all floors, including the basement; however, the Gatehouse Lounge, located on the first floor, is accessible only by stairs.

With respect to Allegation 3, the Complainant alleged that Towers Hall (Building 3) is not accessible to individuals with disabilities because it lacks an elevator and/or portions of Building 3 are accessible only by stairs. The College informed OCR that Building 3 was originally constructed in 1963; accordingly, absent construction or alteration after June 3, 1977, Building 3 is an existing facility under the regulation implementing Section 504. The College informed OCR that Building 3 consists of five “towers” (Tower A-E); each tower has seven floors, including a basement, and the towers are connected by hallways on the third floor. The College informed OCR that the basement of Building 3 houses a seasonal haunted house; the first floor of Towers A-E and the third floor of Tower D house student programs; the second floor of Towers A-E each house a Greek Life lounge; the third floor of Tower C houses the Office of Residential Education; and the remaining floors of each tower of Building 3 house dormitories. The College informed OCR that there is a designated accessible entrance to the third floor of Building 3; however, the College acknowledged that Building 3 does not have any elevators and other floors in Building 3 are accessible only by stairs.

With respect to Allegation 4, the Complainant alleged that Cunard Hall (Building 4) is not accessible to individuals with disabilities because (a) it lacks an elevator and/or portions of Building 4 are accessible only by stairs; and (b) the hallways are too small/narrow to accommodate wheelchairs. The College informed OCR that Building 4 was originally constructed in the 1860s; accordingly, absent construction or alteration after June 3, 1977, Building 4 is an existing facility under the regulation implementing Section 504. The College informed OCR that Building 4 has three floors. The first floor of Building 4 houses Financial Aid, Student Accounts, and the Registrar; and the third floor houses the Physician Assistant program.⁸

With respect to Allegation 4(a), the Complainant alleged that Building 4 is not accessible to individuals with disabilities because it lacks an elevator and/or portions of Building 4 are accessible only by stairs. The College acknowledged that the entrance to Building 4, located on floor 1, is accessible only by way of a stairway from the exterior. Building 4 does not have any elevators; and access to floors 2 and 3 from floor 1 requires the use of stairs.

With respect to Allegation 4(b), the Complainant alleged that Building 4 is not accessible to individuals with disabilities because the hallways are too small/narrow to accommodate wheelchairs. The College asserted to OCR that the width of the hallways in Building 4 is compliant with the 2010 ADA Standards, but acknowledged that there is a door within the hallway of floor 1 that has insufficient maneuvering clearance. Specifically, the College explained that there is insufficient clearance space for an individual in a wheelchair to maneuver through the doorway

⁸ The College has not yet provided information about programs and activities located on the second floor.

while simultaneously holding the door open. During the course of OCR’s investigation, the College indicated that it intends to install an automatic door opener at the door in the hallway. The College asserted that, with the automatic door opener installed, there would be sufficient clearance once the door is open.⁹

With respect to Allegation 5, the Complainant alleged that the “Coffeehouse” located in the basement of Reynolds House (Building 5) is not accessible to individuals with disabilities because Building 5 lacks an elevator and the “Coffeehouse” is accessible only by stairs. The College informed OCR that Building 5 was originally constructed in the 1880s; accordingly, absent construction or alteration after June 3, 1977, Building 5 is an existing facility under the regulation implementing Section 504. The College informed OCR that Building 5 has multiple floors, including a basement. The College informed OCR that the main entrance to Building 5 is accessible; but acknowledged that the Coffeehouse, which hosts student-run and orientation events, is located in the basement and is accessible only by stairs.

With respect to Allegation 6, the Complainant alleged that the Postal Center located in Campus Hall (Building 6) is not accessible to individuals with disabilities because Building 6 lacks an elevator and the Postal Center is accessible only by stairs. The College informed OCR that Building 6 was originally constructed in 1957; accordingly, absent construction or alteration after June 3, 1977, Building 6 is an existing facility under the regulation implementing Section 504. The College informed OCR that Building 6 has four floors. The College informed OCR that the main entrance to Building 6 is accessible; and the entrance to the Postal Center is located on the first floor. The College informed OCR that the Postal Center has both an upper level (for package and mail shipping) and lower level (for package and mail pick up). The College stated that the upper level is on the main floor, which is accessible through the main entrance; however, the College acknowledged that the lower level of the Postal Center is accessible only by stairs.

The College informed OCR that its practice is to relocate programs and activities offered in inaccessible buildings to accessible locations upon request when necessary to make programs and activities accessible to individuals with disabilities. As examples, the College informed OCR that, upon request: (i) its Disability Services Office (DSO) works with the Registrar to relocate credit bearing classes in Buildings 2, 4, and 6 to accessible locations; (ii) Central Services can arrange for Residential Education to hand-deliver a student’s mail from the Postal Center; and (iii) faculty can hold meetings scheduled in Building 6 in an accessible location or virtually. The College has not yet indicated to OCR how it ensures that each program and activity offered in inaccessible locations in Buildings 1-4, the Coffeehouse in Building 5, and the Postal Center in Building 6, when viewed in its entirety, is readily accessible to individuals with disabilities. The College also has not yet provided specific information to OCR indicating how it notifies all individuals with disabilities of the process for requesting that all such programs and activities be relocated to accessible locations.¹⁰ During OCR’s investigation of the complaint, the College expressed interest in resolving Allegations 1-6 without further investigation.

⁹ Section 403.5.1 of the 2010 ADA Standards requires that the clear width of interior accessible routes be 36 inches (915 mm) minimum.

¹⁰ The College informed OCR that residents of Building 3 are informed of the process for requesting relocation of programs and activities housed on inaccessible floors in Building 3 during mandatory dormitory floor meetings at the beginning of each academic year. The College asserted that staff in the Disability Services Office typically inform students with

On September 10, 2020, the College signed the enclosed agreement to resolve the complaint without further investigation. OCR will monitor implementation of the 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 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 the individual 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, please contact Eboné Woods, Compliance Team Attorney, at (646) 428-3898 or ebone.woods@ed.gov; or Bernard Dufresne, Compliance Team Attorney, at (646) 428-3802 or bernard.dufresne@ed.gov.

Sincerely,

/s/

Timothy C.J. Blanchard

Encl.

cc: Bran Noonan, Esq.
Mohammad B. Shihabi, Esq.

mobility impairments that programs and activities housed in inaccessible locations on campus can be relocated to an accessible location; and if made aware of the need to relocate a program or activity, will coordinate such relocation. The College did not provide any specific information to OCR in support of this assertion.