



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515  
100 PENN SQUARE EAST  
PHILADELPHIA, PA 19107-3323

REGION III  
DELAWARE  
KENTUCKY  
MARYLAND  
PENNSYLVANIA  
WEST VIRGINIA

**July 2, 2015**

IN RESPONSE, PLEASE REFER TO: 03-15-2050 and 03-15-2089

Eric J. Barron, Ph.D.  
President  
Pennsylvania State University  
201 Old Main  
University Park, PA 16802

Dear Dr. Barron:

This is to notify you of the resolution of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Pennsylvania State University (the University). The Complainants alleged that the University discriminates against persons with disabilities by:

1. Failing to provide adequate accessible parking for events held at the University's Beaver Stadium, including the four reserved parking lots closest to Beaver stadium, in accordance with the Americans with Disabilities Act Accessibility Guidelines;
2. Failing to provide railings at steps in stadium seating at Beaver Stadium; and
3. Not providing adequate designated accessible parking for events held in the University's Recreation Hall.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by any recipient that receives Federal financial assistance from the Department.
- Title II of the Americans with Disabilities Act of 1990 (ADA), and its implementing regulation, 28 C.F.R. Part 35, over complaints alleging discrimination on the basis of disability that are filed against public entities, such as public institutions of higher education.

As a recipient of Federal financial assistance and a public entity, the University is subject to Section 504, the ADA and their respective implementing regulations.

### **Legal Standards**

Accessibility, general: The implementing regulations of Section 504, at 34 CFR § 104.21, and Title II, at 28 CFR § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

Accessibility, existing facilities: The implementing regulations of Section 504, at 34 CFR § 104.22, and Title II, at 28 CFR § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed “existing facilities,” the District will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the programs, activities, and services are readily accessible to and usable by persons with disabilities. The District may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The District is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statute, the District must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate. The implementing regulation of Section 504, at 34 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

Accessibility, new construction: The implementing regulations of Section 504, at 34 CFR § 104.23(b), and Title II, at 28 CFR § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed “new construction or alterations.” The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS or the Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992. In this case, OCR used UFAS as a guideline in determining if the building entrances at the School are accessible.

The regulation implementing Title II were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (the 2010 ADA Standards), which became effective March 15, 2011. The ADA Standards provide, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards.” OCR policy provides that a recipient may elect to utilize the 2010 ADA Standards under Section 504.

Under OCR procedures, a complaint may be resolved before the conclusion of an investigation if a recipient asks to resolve the complaint by signing a Voluntary Resolution Agreement. The provisions of the agreement must be aligned with the complaint allegations and be consistent with applicable regulations. Such a request does not constitute an admission of liability on the part of a recipient, nor does it constitute a determination by OCR of any violation of our regulations.

Consistent with OCR's procedures, the University requested to resolve allegations #1 and #3 through a Voluntary Resolution Agreement (the Agreement), which was executed by the University on June 25, 2015. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement. Accordingly, OCR is concluding its investigation of these allegations as of the date of this letter.

Regarding allegation #2, the Complainants entered into an agreement with the University (copy enclosed) through ECR, which resolves allegation #2 in this complaint. Therefore, we are closing our file on this matter effective the date of this letter. Please be advised that OCR does not sign, approve, or endorse any agreement reached between the complainant and the University through ECR and does not monitor the implementation of the agreement. However, if a breach of the agreement occurs, the complainant has the right to file another complaint. If a new complaint is filed, OCR will investigate only allegations of discrimination, not allegations that the agreement has been breached. To be considered timely, the new complaint must be filed either within 180 days of the original discrimination or within 60 days of the date the complainant obtains information that a breach occurred, whichever is later.

This letter is not intended nor should it be construed to cover any other issues regarding the University's compliance with Section 504 and the ADA, which may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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, we 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.

Please be advised that the University 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.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Cynthia Wesley at (215) 656-8548 or by email at [cynthia.wesley@ed.gov](mailto:cynthia.wesley@ed.gov).

Sincerely,

/s/

Judith A. O'Boyle  
Acting Team Leader

Enclosures