



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
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KENTUCKY
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May 25, 2016

IN RESPONSE, PLEASE REFER TO: 03162062

Kim S. Phipps, Ph.D.
President
Messiah College
Office of the President
One College Avenue
Suite 3000
Mechanicsburg, PA 17055

Dear Dr. Phipps:

This is to notify you of the determination made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the above-referenced complaint filed against Messiah College (the College). The Complainant alleged that the College discriminates against persons with disabilities by failing to provide adequate accessible parking spaces at Mellinger Apartments.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. Section 504 also prohibits retaliation. As a recipient of Federal financial assistance from the Department, the College is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR's investigation of this complaint included a careful review of information gathered through written documentation provided by the Complainant and the College. OCR also conducted an onsite visit to the College on March 4, 2016. After a careful review of all information obtained, OCR has determined there is sufficient evidence to support a finding of with a violation of Section 504 with respect to the allegation. In order to resolve this violation, the College entered into a Resolution Agreement with OCR (enclosed). An analysis of the information obtained by OCR in its investigation and its findings are detailed below.

Legal Standards

Accessibility:

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Pursuant to Section 504, recipients must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford persons with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.4(b)(2).

The Section 504 regulation also states that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. 34 C.F.R. § 104.21. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This compliance standard is referred to as "program access." This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. §104.22(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, alteration of existing facilities, construction of new facilities, or any other methods that result in making it program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b). 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.

For support facilities for a program in an existing facility being viewed in its entirety, such as restrooms, telephones, water fountains, and parking spaces, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a). Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977.

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI) A117.1-1961(1971).

Relevant Facts

Accessibility Issues

Mellinger Apartments are on-campus apartments that provide housing to approximately 180 upper-class students. The parking lot was constructed in 1985 and is considered new construction under the ANSI accessibility standard. The University states that no modifications have been made to the parking lot since its construction in 1985, other than patching potholes. During the on-site visit, the Vice President for Operations (VP) stated that student lodging and parking are decided by lottery. However, if a student with a disability makes a request for accommodations, that individual gets priority for lodging and parking. All parking for individuals with disabilities requires a permit in order to guarantee a specific parking space. The VP stated that Mellinger Apartments is not a facility in which the University would place a student with a disability because the building is not accessible since all entrances have steps. The apartment building was built in 1985 and, according to the University's website, was renovated in 2001. According to the College, renovations made to the facility included installation of new carpet and painting.

Analysis: Accessibility Issues

There are a total of 58 parking spaces with 2 designated as accessible to persons with mobility impairments. ANSI does not identify a minimum number of accessible parking spaces necessary. ANSI 4.3.4. states care should be given in the distribution of spaces for use by the disabled in accordance with the frequency and persistency of parking needs. OCR finds that the number of spaces complies with ANSI.

Parking Space #1 dimensions

Parking space dimensions for parking space #1 as measured by OCR are 110" wide x 240" long. The designated parking space is not on the shortest accessible route into the building. In accordance with ANSI 4.3.3, parking spaces for individuals with disabilities when placed between two conventional diagonal or head-on parking spaces should be 12 feet wide. Therefore, this parking space is not compliant with ANSI as it is not wide enough.

Access aisle parking space #1

No access aisle is present. While ANSI does not specifically require an access aisle, it does specify that such spaces should open on one side, allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto level ground.

Description of Route to Curb Cut #1/Sidewalk

An individual must travel around the back of the vehicle in order to get to the curb cut and sidewalk. According to ANSI 4.3.4, care in planning should be exercised so that individuals with disabilities are not compelled to wheel or walk behind parked cars. Therefore, parking space #1 is not compliant with ANSI.

Curb cut #1 dimensions

The curb cut can be accessed two parking spaces away. The curb cut is 48 inches wide but depending on the angle at which you approach the curb cut, it decreases to 34 or 38 inches, and a person using a wheelchair may end up in the grass due to the angle at which one must navigate the curb cut. The slope of the curb cut is 11.29% and 6.44 degrees. ANSI requires a ramp not exceed 8.33% and 4 degrees. Therefore, the curb cut's slope does not comply with ANSI.

Changes in Level at base of curb cut #1

ANSI does not specify requirements for curb cuts, only walks and ramps. According to ANSI 4.2.2, walks shall be of a continuing common surface, not interrupted by steps or abrupt changes in level. The base of the curb cut closest to parking space #1 has an abrupt change in level at 1.5 inches on one side increasing to 2 inches on the other. Therefore, the curb cut does not comply with ANSI.

Accessible route/sidewalk from curb cut #1

The sidewalk is consistently 60 inches wide and has a slope of 2% from curb cut #1 and the entrance to the building. ANSI requires a public walk to be at least 48 inches wide and should have a gradient not greater than 5%. Therefore, this sidewalk complies with ANSI.

Signage Height parking space #1

Signage height as measured by OCR is 67” to 85”. ANSI has no requirements for parking signage except that parking for individuals with disabilities must be identified for use as stated in 4.3.1. Therefore, parking signage complies with ANSI.

Parking Space #2 dimensions

The dimensions for parking space #2, as measured by OCR, are 118” wide x 242” long. The designated parking space is not on the shortest accessible route to the building. In accordance with ANSI 4.3.3, parking spaces for individuals with disabilities when placed between two conventional diagonal or head-on parking spaces should be 12 feet wide. Therefore, this parking space is not compliant with ANSI as it is not wide enough.

Access aisle parking space #2

No access aisle is present. While ANSI does not specifically require an access aisle, it does specify that such spaces should open on one side, allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto level ground.

Description of Route to Curb Cut #2/Sidewalk

An individual must travel through a potential traffic lane in order to get to the curb cut and sidewalk. According to ANSI 4.3.4, care in planning should be exercised so that individuals with disabilities are not compelled to wheel or walk behind parked cars. Therefore, parking space #2 is not compliant with ANSI.

Curb cut #2 dimensions

The curb cut can be accessed approximately 10 feet away from parking space #2 by walking into a potential lane of traffic. The curb cut is 67 inches wide. The slope of the curb cut is 5.1% and 2.92 degrees which is compliant with ANSI.

Changes in Level at base of curb cut #2

There are no abrupt changes in level at the base of this curb cut. It is flush with the ground.

Accessible route/sidewalk from curb cut #2

The sidewalk is 60 inches wide and has a slope of 2% from curb cut #2 and the entrance to the building for the majority of the way. However, at the corner where one must make a right turn in order to proceed towards the building, the width of the walk decreases slightly to 56 inches, and the cross slope at that point increases to 6.5% and 3.72 degrees. Although ANSI does not mention cross slopes, as previously noted, ANSI requires a public walk to be at least 48 inches wide and should have a gradient not greater than 5%. Therefore, this sidewalk does not comply with ANSI due to a 6.5% cross slope.

Signage Height parking space #2

64” to 82”. ANSI has no requirements for parking signage other than parking for individuals with disabilities except that parking must be identified for use as stated in 4.3.1. Therefore, parking signage complies with ANSI.

Conclusion

The specific areas that are not compliant are listed above.

OCR engaged in negotiations with the College to resolve the Section 504 violations in this case. The College entered into an agreement with OCR on May 18, 2016. When fully implemented, the resolution agreement will address all of OCR’s compliance concerns; OCR will monitor the implementation of the agreement until the College is in compliance with the regulation implementing Section 504, at 34 C.F.R. § 104.21, which was at issue in this complaint. The College’s first monitoring report is due to OCR on September 30, 2016.

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 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 Complainant may file another 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, 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.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR’s finding, you may contact Ms. Cynthia Wesley at 215-656-8548 or cynthia.wesley@ed.gov. Thank you for your cooperation with this matter.

Sincerely,

/s/

Nancy E. Potter
Team Leader

Enclosures