



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
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PHILADELPHIA, PA 19107-3323

REGION III
DELAWARE
KENTUCKY
MARYLAND
PENNSYLVANIA
WEST VIRGINIA

May 17, 2018

IN RESPONSE, PLEASE REFER TO: 03182015

Dr. Richard M. Englert
President
Temple University
1801 N. Broad Street
Philadelphia, PA 19122

Dear Dr. Englert:

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 Temple University (the University). The complaint alleged that the University discriminated against individuals on the basis of disability. Specifically, the complaint alleged that the University discriminated with respect to the provision of accessible parking to persons with disabilities at its Administrative Building located at 2450 W. Hunting Park Avenue (the Building) by: 1) allowing persons who are not disabled to park in the designated accessible parking spaces; and 2) not providing a sufficient number of designated accessible parking spaces at this lot.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities, such as public institutions of higher education. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to Section 504, Title II, and their implementing regulations.

As part of OCR's investigation, we interviewed the Complainant and University personnel and reviewed information submitted by both parties. Additionally, OCR conducted an onsite inspection of the parking facility on January 29, 2018.

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.

During the course of the investigation, the University took actions which resolved Allegation 1. Accordingly, OCR is dismissing Allegation 1. In addition, based on the information obtained by OCR during its investigation, OCR determined that there is sufficient evidence to support a finding of a violation with regard to Allegation 2. The University signed the enclosed Resolution Agreement (Agreement) on May 14, 2018, which when fully implemented, will resolve Allegation 2.

The basis for OCR's decisions is explained below.

Allegation 1

Complainant's Allegation

XX -- paragraph redacted -- XX

Factual Summary

During OCR's onsite inspection, OCR observed that all vehicles which were parked in the designated accessible parking spaces had a disability placard visibly displayed or a license plate for parking in designated accessible parking spaces. There was one vehicle which was parked in a designated accessible parking space without a placard or license plate; however, upon further investigation by University personnel, it was determined that the owner of this vehicle received permission to park there as a result of having a temporary disability.

During the course of OCR's investigation, the University revised and updated its parking policy with regard to the procedures for obtaining authorization to park in designated accessible parking spaces in the parking facility serving the Building and monitoring and enforcing parking in the Building's parking facility. This new policy, the Temple Administrative Services Building (TASB) Accessible Parking Policy 950.592 (the Policy), went into effect on March 23, 2018.

The Policy provides the following procedures for persons with disabilities to obtain permanent and temporary parking:

Permanent Parking

Obtain a special license plate or parking placard from Pennsylvania's Bureau of Motor Vehicle Services of the Department of Transportation.

Only vehicles operated by or for the transportation of a person with a disability may be parked in parking spaces reserved for persons with disabilities.

Obtain parking approval from the TASB Building Management and apply for parking in Temple University Health System (TUHS) parking facilities by contacting the Office of Parking Services; upon approval, the Office will issue a hang tag for qualified employees to park in one of the reserved spaces.

Register with TASB by providing the following information: name, contact information, vehicle make and model, license plate number, and approximate end date of parking, if temporary.

Temporary Parking

Employees with disabilities who believe that they qualify for accessible parking on a temporary basis not to exceed 90 days should contact Human Resources (HR) to submit a Disability Accommodation Request Form, to be accompanied by a doctor's note. Employees who require accessible parking for more than 90 days must apply for a permanent parking space reserved for persons with disabilities.

Once temporary parking accommodations are approved by HR, TASB Building Management will provide the employee with a temporary parking pass to be displayed on the dashboard of their vehicle. This pass indicates that the parking is temporary and provides the date of expiration. Temporary parking passes are not transferable.

Monitoring and Enforcement

With regard to unauthorized parking in designated accessible parking spaces, the Policy provides the following procedures:

Owners of vehicles who do not display the appropriate placard or who are not on the list of approved vehicles receive warnings, discipline for violating work rules or are towed. Specifically:

- Employees who have first-time violations receive a note directing them to speak with TASB's Security Contractor (Allied Universal) and a warning and reminder of the applicable TUHS policy. Employees who have multiple parking violations are subject to discipline for violating work rules.
- Visitors with first-time violations receive a note warning them to abide by the applicable parking restrictions. Visitors who repeatedly violate parking rules are subject to towing.

University personnel further advised OCR that it maintains a record of the license plates of all vehicles which have obtained authorization to park in the designated accessible parking spaces, both for permanent and temporary disability access. This list

is updated on a monthly basis or as necessary and shared with Allied Universal and the TUHS facilities team. Allied walks the lot two times per day and challenges any individual persons who park in the accessible parking spaces without authorization. The TUHS facilities team also regularly walks the property and identifies vehicles they observe that do not have the appropriate placard and are not on a list of approved vehicles.

The University acknowledged to OCR that it has had problems with persons parking in designated accessible parking who do not have the authorization to do so; however, it maintained to OCR that the revision of its policies for accessible parking, together with the specific plan for implementing this policy which includes the monitoring of the lot, the issuance and display of temporary parking tags, and the imposition of specific consequences for unauthorized parking, have adequately addressed these concerns.

Analysis and Conclusion

OCR will dismiss an allegation when OCR determines that it has been resolved. Specifically, the information provided by the University established that since the complaint has been pending with OCR, the University has revised its policy for accessible parking at this parking facility and has implemented specific procedures to address the unauthorized parking in the designated accessible parking spaces at the parking facility. Among these measures include a plan for monitoring the parking facility which includes regular patrols and a tracking system to ensure that the cars parked in the designated accessible spaces have received authorization from the University. Moreover, the University now issues hang tags to be displayed for persons who are issued accessible parking due to temporary disabilities, which assists the University in identifying which vehicles are authorized to park in the designated accessible parking spaces and which vehicles are not. In order to enforce the policy prohibiting unauthorized parking, it now provides for the imposition of specific consequences for parking in designated accessible parking spaces without proper authorization, which serves as a deterrent from doing so. For these reasons, OCR determined that the concern identified in Allegation 1 has been addressed and resolved. Accordingly, OCR is dismissing this allegation.

Allegation 2

Legal Standards

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. § § 104.21-104.23. Comparable provisions of the Title II regulation are found at 28 C.F.R. § § 35.149-35.151. Both regulations provide that no qualified person with a disability shall, because a recipient'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 program or activity operated by the recipient.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 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.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, “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 uses the accessibility standards as a guideline for assessing the accessibility of existing facilities.

Complainant’s Allegation

The Complainant alleged to OCR that there are not a sufficient number of designated accessible parking spaces in the parking facility serving the Building.

Factual Summary

The University does not own the Building or the parking facility which serves it. The University stated that the TUHS leases both the Building and the parking facility and some of the University’s administrative offices are located in the Building.

The University reported that the construction of the parking facility was initially completed in 2007-2008 and the Front Lot, which is the location of all of the designated

accessible parking spaces, was restriped in August 2017. No other work was done at that time and the parking spaces in the parking facility were not reconfigured.

The parking facility which serves the Building is separated into three sections as follows:

Front Lot Section – This section of the parking facility is located directly in front of the Building and is the section of the parking facility that is located closest to the Building. There are a total of 38 parking spots in this section of the parking facility, of which 32 are designated accessible to persons with disabilities. The University stated that these 32 accessible parking spaces for persons with disabilities are only available between the hours of 8:00 AM and 5:30 PM, which are the business hours for the University's administrative offices. The University further stated that between the hours of 5:30 PM and 8:00 AM, there are 22 accessible parking spaces available for persons with disabilities. The University stated that the reduction in available accessible parking during these hours is due to safety concerns for 2nd and 3rd shift personnel who provide patient-related services in a telephone call center for TUHS, as the Building is located in a high crime area and personnel want to park as close to the Building as possible; reducing the number of accessible parking spaces during the overnight hours assists them in this effort.

Sections A and B - These sections of the parking facility are located on a hill directly across the street from the Building and are adjacent to one another. Section A has a total of 478 spots and Section B has a total of 131 parking spaces; neither section has any designated accessible parking spaces. The University advised OCR that it did not designate accessible parking in these sections of the parking facility because of the difficult terrain as well as the busy thoroughfare one must cross to access the Building.

The total number of parking spaces in the parking facility is 647. The total number of designated accessible parking spaces for the parking facility is 32 or 22, depending on the time of day.

OCR observed that there were clearly painted lines marking the boundaries for each designated accessible parking space and the Universal Symbol of Accessibility was painted on the macadam for all of these parking spaces. Additionally, there were signs posted directly in front of the designated accessible parking spaces for 30 of the 32 parking spaces which also displayed the University Symbol of Accessibility. However, there were two designated accessible parking spaces that did not have this signage posted in front of these spaces.

Analysis and Conclusion

The parking facility is considered to be new construction based on the date of its construction. The restriping of the parking lot in 2017 is not an alteration as it was for maintenance purposes only and did not affect the usability of the parking facility or the

parking spaces in the parking facility. Based on the date of construction of the parking facility and given that it has not been altered in a manner which affects its usability, the parking lot must comply with either of the following accessibility standards for new construction: UFAS or ADAAG.

It is permissible under the applicable accessibility standards to count the three separate lots serving the building as a parking facility and calculate the minimum number of designated accessible parking spaces based on the total number of parking spaces in the parking facility, particularly where doing so provides greater accessibility as in this instance. Following this approach, OCR considered the Front Lot, Section A and Section B to be a parking facility within the meaning of accessibility standards.

The total number of designated accessible parking spaces in this parking facility complies with and exceeds the minimum requirements for the number of accessible parking spaces under both UFAS and ADAAG. Both UFAS and ADAAG require that 2% of the total number of parking spaces are accessible. Applying this formula, two percent of the 647 parking spaces equals 12.94 (rounded up to 13 parking spaces) that must be designated accessible in the parking facility. There are 22 or 32 designated accessible parking spaces available, depending on the time of the day at issue. Also, it is sufficient for the University to designate all accessible parking spaces in the Front Lot, the section of the lot that is located closest to the building that it serves, as increased accessibility is achieved by providing all of the designated accessible parking spaces in this location.

OCR also considered the signage at the accessible parking spaces in its investigation of Allegation 2, as proper identification of parking spaces pertains to the sufficiency of the available accessible parking at the parking facility; it will not be apparent that a parking space is designated as accessible if it is not properly identified. During OCR's onsite, OCR observed that two of the 32 designated accessible parking spaces did not have any signage posted in front of the designated accessible parking spaces; more specifically, there was no sign posted at the parking space displaying the University Symbol of Accessibility. This lack of signage in front of two parking spaces which are designated accessible parking spaces does not comply with the applicable accessibility standards for signage under UFAS or ADAAG.

Therefore, OCR's investigation determined that there was sufficient evidence to support a finding of a violation of Section 504 and Title II with regard to Allegation 2, specifically with regard to the lack of signage at two of the designated accessible parking spaces in the parking facility. On May 14, 2018, the University signed a Voluntary Resolution Agreement with OCR to resolve this compliance concern. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the University's implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the University's compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein. 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 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.

We appreciate the University's cooperation in the resolution of this complaint and we would especially like to thank its Counsel, Mr. Etezady, for facilitating OCR's investigation of this complaint, including OCR's onsite visit.

If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or Dale.Leska@ed.gov, or me at 215-656-8522 or Vicki.Piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

cc: Carmen Etezady, Esq., District General Counsel (w/encl), via email only