



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION III
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KENTUCKY
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WEST VIRGINIA

March 23, 2022

IN RESPONSE, PLEASE REFER TO: 03-21-1285

Dr. Penny Nixon
Universal Institute Charter School
1415 Catharine Street
Philadelphia, PA 19146
By Email Only: pnixon@universalcompanies.org

Dear Dr. Nixon:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) against the Universal Institute Charter School, which we will refer to as the School. The Complainant alleges that the School is discriminating on the basis of disability by:

1. Failing to provide a physically accessible space, by:
 - a. Not having a working elevator; and
 - b. Providing inadequate accessible parking spaces.
2. Failing to provide the Complainant with reasonable workplace accommodations by forcing him to work upstairs without access to an elevator and not providing accessible parking.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the School receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

After carefully considering all the information obtained during the investigation, OCR did not find sufficient evidence to support Allegation 1(b). However, before OCR completed its investigation of the remaining allegations, the School expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Background

The Complainant is a XXXXXXXXXXXXX at the School. He started in XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. In the fall of 2021, he began in-person instruction. He worked in the building XX. The elevator in that building was not operational during the fall of 2021.

Allegation 1: Physical Accessibility of the School

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient 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. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect the usability of the facility, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, recipients had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipients had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipients may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

Relevant Facts and Analysis

a. Elevator

Although requested by OCR, the School was unable to provide information specifying the dates that the School was built or that alterations were made. During the course of this investigation, the School took steps to repair the elevator. Those repairs, based on communications provided by the School, were more complicated than originally expected. The repairs were completed in February 2022 and the elevator is currently awaiting final inspection.

Prior to the conclusion of OCR's investigation, the School requested to enter into a voluntary resolution agreement which will address the provision of the elevator.

b. Parking Lot

The School is located in a dense part of Philadelphia with limited on-street parking. There is no public parking at the school. In roughly September 2021, the School began offering parking to its employees in a privately owned garage approximately 0.6 miles away from the School. There is also a small lot across the street from the School, but it is also privately owned with rented spaces available to the Principal and management from the School's corporate office.

OCR finds that the School has no public parking available and therefore has not failed to provide adequate accessible spaces to the public. Further, the lot across the street is reserved for senior officials and is a benefit afforded to the persons in those parking spots. Unless appropriate under the reasonable accommodation process discussed below, the School has no obligation under

Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149 to designate any of those spots as accessible spots.

Therefore, OCR finds insufficient evidence to conclude that the School failed to provide an accessible space to the Complainant.

Allegation 2: Employee Accommodations

Legal Standard

The Section 504 regulation, at 34 C.F.R. § 104.11, and the Title II regulation, at 28 C.F.R. § 35.140, provide that no qualified individual with a disability shall be discriminated against in employment on the basis of disability. OCR reviews allegations of employment discrimination under Section 504 and Title II by using regulatory standards established by the U.S. Equal Employment Opportunity Commission (EEOC) to implement Title I of the Americans with Disabilities Act of 1990 (Title I), at 29 C.F.R. Part 1630, if the public entity is subject to Title I jurisdiction. As the School is a public entity with fifteen or more employees, and thus is subject to Title I, OCR analyzed this allegation under Title I standards.

To be entitled to protection under Title I, the employee must be a qualified individual with a disability, which is defined in the employment context as an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such individual holds or desires. To be qualified, an employee must also, with or without reasonable accommodation, be able to perform the essential functions of the job the employee holds or desires.

The Title I regulation defines discrimination to include not making “reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless [the employer] can demonstrate that the accommodation would pose an undue hardship on the operation” of the employer’s business. 29 C.F.R. § 1630.9. To request an accommodation, an individual may use plain language and does not need to mention a specific law or use the phrase “reasonable accommodation.”

Once a qualified individual with a disability has requested an accommodation, the employer must make a reasonable effort to determine the appropriate accommodation, a decision which is best reached through a flexible, interactive process that involves both the employer and the employee. The employer should: (1) analyze the particular job to determine its purpose and essential functions; (2) consult with the employee to ascertain the job-related limitations imposed by the individual’s disability and how those limitations could be overcome with a reasonable accommodation; (3) in consultation with the employee, identify potential accommodations and assess their effectiveness in enabling the individual to perform the essential functions of the position; and (4) consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer. 29 C.F.R. Appendix to Part 1630.

Relevant Facts and Analysis

The School's Employee Manual states that employees who are in need of a reasonable accommodation should contact the Human Resources Department.

According to OCR's investigation to date, the Complainant contacted the Principal in approximately XXXXXXXX to express that he was having difficulty navigating the stairs and walking from the parking spot provided by the School. The Principal then worked with the Complainant directly. The Complainant did not contact the Human Resources Department and the Principal never directed the Complainant to the Human Resources Department.

In XXXXXXXX, the School provided the Complainant with an accessible spot in the same lot provided to all staff that was 0.6 miles away. In XXXXXXXXXXXXX, the Complainant indicated that the distance of the lot was causing him difficulty. The Principal responded by providing him parking in the reserved lot across the street from the School for that day only. The Principal also stated that he was exploring other parking options for the Complainant, including renting a spot in that lot for the Complainant permanently, but he had not yet done so as of XXXXXXXX. In the meantime, the Complainant paid to park in the lot across the street during the fall and winter of XXX.

After the Complainant expressed concerns about navigating the stairs, the Principal worked with the Complainant's supervisor to develop an accommodation until the elevator was repaired: the Complainant would have a classroom on the ground floor and, instead of meeting with students in the classroom, the students would come to him for their instruction. The Complainant told OCR that this accommodation limited his ability to provide services in the manner he preferred, but the Principal and Special Education Liaison stated that the Complainant was still able to provide the services the students were entitled to pursuant to their Individual Educational Plans.

Based on OCR's investigation to date, OCR has preliminary concerns that the School may not have provided an interactive process in compliance with the laws OCR enforces. While the Complainant did not follow the designated process for requesting a reasonable accommodation, by speaking with the Human Resources Department, the evidence does show that the Principal attempted to accommodate his needs rather than directing him to that process, and the Complainant was unsatisfied with those accommodations. However, prior to the completion of this investigation, the School requested a voluntary resolution agreement. As such, OCR has not made a determination regarding the adequacy of the School's process for determining reasonable accommodations for the Complainant.

Resolution Agreement

Pursuant to Section 302 of OCR's *Case Processing Manual*, the School signed the enclosed Resolution Agreement on March 23, 2022. When fully implemented, the Agreement will resolve the concerns identified above by requiring that the School ensure that its elevator is fully operational and in compliance with the applicable regulation, issue a memorandum to all employees that states that the School will provide reasonable accommodations to qualified individuals with disabilities, and will engage in the interactive process with the Complainant to

respond to his request for reasonable accommodations. As is our standard practice, OCR will monitor the School's implementation of the Agreement.

Conclusion

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 the right to file a private suit in federal court whether or not OCR finds a violation.

With regard to allegation 1(b), the complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Please be advised that the School must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the School's cooperation in the resolution of this complaint. If you have any questions, please contact Catherine Deneke, the OCR attorney assigned to this complaint, at 215-656-5964 or Catherine.Deneke@ed.gov.

Sincerely,

/s/
Christina M. Haviland
Supervisory Attorney

Enclosure

cc: Dana King, Esq., dking@universalcompanies.org