



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV**

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

November 16, 2017

Via U.S. & Electronic Mail

XXXXXXXXXXXX.

President
Kennesaw State University
1000 Chastain Road
Kennesaw, GA 30144

Re: OCR Complaint # 04-16-2114

Dear XXXXXXXX:

The U.S. Department of Education, Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint that you filed on February 25, 2016, against Kennesaw State University (University) alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University does not maintain accessible parking lots, accessible routes, doors, classrooms, and offices at the Atrium building (J Building) on the Marietta Campus, and that the University does not enforce the parking in the designated access aisles and accessible parking spaces in the parking lot at this site. Additionally, the complaint alleged that the University failed to provide a grievance procedure and process to complain about accessibility issues.

OCR is responsible for enforcing 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 prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and 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, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Section 504. As a public entity, the University is also subject to the provisions of Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR initiated an investigation of the following issues:

- 1) Whether the University's J Building on the Marietta campus and its parking lots and routes are inaccessible to persons with disabilities, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23, and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151.

- 2) Whether the University fails to provide grievance procedures that incorporate due process standards and that provide for the “prompt and equitable resolution” of complaints, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. § 104.7(b), and the Title II implementing regulation at 28 C.F.R. § 35.107(b).

In reaching a determination regarding the complaint allegations, OCR obtained and reviewed the University’s disability services and grievance policies and procedures, interviewed the Complainant, and conducted a site visit. OCR reviewed the evidence under the “preponderance of the evidence” standard. Under a preponderance of the evidence standard, OCR evaluates the evidence obtained during an investigation to determine whether the greater weight of the evidence is sufficient to support a conclusion that the University failed to comply with Section 504 and Title II as it relates to the complaint issues. OCR has determined by a preponderance of the evidence that the University is in noncompliance with Section 504 and Title II, as alleged. Set forth below is a summary of OCR’s legal standards, findings, and conclusions.

Legal Standards

Issue 1: Accessibility

The regulations implementing Section 504, at 34 C.F.R. §104.21, and Title II, at 28 C.F.R. §35.149, state that no 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 to which Section 504 and Title II apply.

The Section 504 and Title II regulations contain two standards for determining whether a District’s programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities; the other covers new construction and 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 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); 28 C.F.R. §35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, 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); 28 C.F.R. §35.150(b).

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); 28 C.F.R. §35.151(a). 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 and/or Title II 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); 28 C.F.R. §35.151(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). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or equivalent standards. 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), which became effective March 15, 2011. Title II, 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 [ADA] Standards.”

The University renovated the J Building during the investigation of this complaint in June-July 2016. OCR, therefore, used the 2010 ADA Standards¹ in analyzing the University's J Building, its parking lot and designated accessible routes.

Issue 2: Grievance Procedures

Section 504 at 34 C.F.R. § 104.7(a) and (b), and Title II at 28 C.F.R. § 35.107(b) requires a recipient to:

- A. Designate a responsible employee to coordinate its efforts to comply with and carry out its responsibilities and make available to all interested individuals the name, office address, and telephone number of the employee.
- B. Adopt a set of grievance procedures that incorporate “appropriate due process standards;” and provide for the prompt and equitable resolution of any complaint of discrimination on the basis of disability under Section 504 and Title II.

Summary of Investigation

Issue 1: Accessibility

OCR conducted an onsite visit and inspected all of the accessible parking spaces located at the J Building of the University's Marietta campus. OCR staff measured the widths of the parking spaces (including access aisles), ramps, curb ramps, and crosswalks along designated accessible routes. OCR staff also measured the rise and runs of the ramp slopes, including curb ramps, and the height of handrails, where required. OCR staff attempted to ascertain the accessible route for each designated accessible parking space by walking from each designated accessible parking space along what appeared to be the designated accessible route. OCR staff measured the entrances, thresholds and door opening pressure along the designated accessible routes. In addition, OCR staff counted the total number of parking spaces and the total number of designated accessible parking spaces. OCR

¹Located at: <http://www.ada.gov/regs2010/2010ADAStandards/2010ADAStandards.htm#c1>

staff also conducted an accessibility survey of the third floor women's restroom in the J Building. Finally, OCR staff surveyed the accessible routes and adjunct faculty offices on the third floor.

During its onsite, OCR identified non-compliance with respect to the 2010 ADA Standards at the J Building on the University's Marietta Campus. The following highlights OCR's on-site findings:

- While there are the appropriate numbers of designated accessible parking spaces, some designated accessible spaces and aisles do not comply with the 2010 ADA Standards.
- There is a lack of visible vertical signage for some designated accessible parking spaces and adjacent access aisles.
- Some access aisles do not provide access to the designated accessible route.
- There is no curb cut or clear accessible route for some access aisles.
- Access aisles are not marked to prevent unauthorized parking.
- The University does not enforce parking restrictions in the designated accessible parking spaces.
- One of the three adjunct faculty office spaces on the third floor of the J Building does not provide sufficient turning radius, clear floor space, and maneuvering clearance.
- The third floor women's restroom has an accessible toilet stall which has a toilet paper dispenser that obstructs the side grab bar.

Accordingly, OCR finds that the University is in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23, and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151 with respect to the accessibility issue in this complaint.

Issue 2: Grievance Procedures

During its investigation, OCR also reviewed the University's website, catalog, Student and Employee Handbooks, and other data provided by the University. OCR found that the University makes its nondiscrimination statement and Section 504 Grievance Procedures readily available to the public, students, and staff/faculty on its website and handbook. The University also clearly identifies the designated compliance personnel along with their contact information, provides a method for filing complaints, and provides an assurance that the University will take disciplinary action to address discrimination.

OCR's review of the grievance procedures identified areas of concern that affect the University's ability to provide for the prompt and equitable resolution of complaints as required by Section 504 and its implementing regulation at 34 C.F.R. § 104.7(b), and the Title II implementing regulation at 28 C.F.R. § 35.107(b).

Resolution Agreement

The University signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegations in accordance with the requirements of Section 504 and Title II. The Agreement requires the University to conduct an accessibility survey of the Atrium (J) Building on the University's Marietta campus and its parking spaces, including the signage and curb access associated with that parking, and develop an accessibility plan for OCR's review and approval. Upon OCR's approval, the University shall begin the process of implementing the plan. The Agreement also requires the University to revise, adopt, and implement its grievance

procedures to address student complaints brought under Section 504 and Title II. Additionally, the University will provide training on its revised grievance procedures to all University employees who are directly involved in receiving, processing, investigating and/or resolving complaints or other reports of discrimination.

OCR will monitor the University's implementation of the attached Agreement to ensure that it is fully implemented and that the University is in compliance with the statutes and regulations at issue in this complaint.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

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 duly authorized OCR officials and made available to the public.

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.

If you have any questions regarding this matter, please contact Ms. Edget Betru, Investigating Attorney, or myself Wendy Gatlin, at (404) 974-9356.

Sincerely,

//S//

Wendy Gatlin
Compliance Team Leader

Enclosure