



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

April 9, 2021

Via Email Only

Steve Lusk, Esq.
Assistant Director of Compliance
State of Tennessee Real Estate Asset Management
Tennessee Tower, 24th Floor
312 Rosa L. Parks Ave.
Nashville, Tennessee 37243
steve.lusk@tn.gov

**RE: OCR Complaint No. 04-17-3002
Resolution Letter**

Dear Mr. Lusk:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received on February 17, 2017, against the Tennessee Department of Human Services, Vocational Rehabilitation Services Main Street Office in Memphis, Tennessee (Vocational Rehabilitation).¹ This complaint was originally filed with the U.S. Department of Justice (DOJ), Disability Rights Section, and DOJ transferred this complaint to OCR for further processing. The complaint alleges that Vocational Rehabilitation does not provide an accessible route or entrance to its building for individuals with disabilities.

OCR is responsible for enforcing the following laws:

- Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) 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.
- Title II of the Americans with Disabilities Act of 1990, as amended, (Title II) 42 U.S.C. §§ 12131 et seq., and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

As a recipient of Federal financial assistance from the Department and a public entity, Vocational Rehabilitation is subject to these laws.

¹ You advised OCR that you have delegated authority to act on behalf of Vocational Rehabilitation with respect to OCR Complaint # 04-17-3002.

Based on the foregoing, OCR opened the following issue(s) for investigation:

Whether Vocational Rehabilitation discriminates against individuals with disabilities at its Main Street Office in Memphis, Tennessee by failing to provide an accessible route and entrance to the building, in noncompliance Section 504 and its implementing regulation at 34 C.F.R. §§104.21-104.23, and Title II implementing regulation at 28 C.F.R. §§35.149-35.151.

During OCR's investigation of this complaint, to date, we engaged in communications with you, and we also reviewed a partial data response to OCR's data request letter, which included, among other things, a description of Vocational Rehabilitation services and four short videos clips of various routes to the entrance of the building that houses Vocational Rehabilitation. OCR also independently reviewed publicly available, relevant information and images from the internet. Prior to the conclusion of the investigation, you expressed an interest in voluntarily resolving this complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved before the conclusion of an investigation, when the recipient (or its representative) expresses an interest in resolving the complaint and OCR determines that it is appropriate to resolve the investigation through a 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.

Legal Standards

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 facility usability, 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, a recipient had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADA Accessibility Standards) 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 recipient had a choice of complying with either UFAS, the ADA Accessibility Standards, or the 2010 ADA Standards for Accessible Design (2010 ADA 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 recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 ADA Standards consist of 28 C.F.R. § 35.151 and the 2004 ADA Accessibility Standards, at 36 C.F.R. Part 1191, appendices B and D.²

Summary of Preliminary Investigation

The Vocational Rehabilitation office at issue in this complaint is housed on the 10th floor of the One Commerce Square Tower, located at 40 South Main Street in downtown Memphis, Tennessee. Although Vocational Rehabilitation clients may receive services at other Vocational Rehabilitation offices in Shelby County and attendance at the Vocational Rehabilitation office at One Commerce Square is not required for service, the latter office serves as a central location for Vocational Rehabilitation clients to complete applications for services and receive counseling from Vocational Rehabilitation staff. According to the building's website, the building is 29 stories tall and was built in 1972. The website does not include information as to whether, and if so, when the building has undergone alterations, and this information was not included in Vocational Rehabilitation's partial response to OCR's data request letter. Therefore, OCR used the 2010 ADA Accessibility Standards in reviewing the Vocational Rehabilitation facility at issue in this complaint and, based on its investigation conducted to date³, determined that the site does not provide entrances and routes to the building housing the Main Street Office building that comply with the 2010 ADA Standards §§ 402, 405, 406, 502 and Advisory 502.3.

² <https://www.ada.gov/regs2010/2010ADAStandards/2010ADASTandards.htm#titleII> (Last accessed 3/08/2021)

³ OCR will forward a copy of its assessment, upon request.

Conclusion

Pursuant to Section 302 of OCR's *CPM*, Vocational Rehabilitation signed the enclosed Resolution Agreement (Agreement) on April 9, 2021 which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with (a) the allegation(s) and issue(s) raised by the Complainant and (b) the information discussed above, which was obtained during OCR's investigation; and are consistent with applicable statute(s) and regulation(s). OCR will monitor the implementation of the Agreement until Vocational Rehabilitation is in full compliance with terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address Vocational Rehabilitation'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.

Please be advised that Vocational Rehabilitation 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, assists, or participates in a proceeding under a law enforced by OCR. 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.

If you have any questions, please contact Ms. Demetria Mills-Obadic, the OCR attorney assigned to this complaint, at 404-974-9353 or Demetria.Mills-Obadic@ed.gov.

Sincerely,

Jana Erickson, Program Manager (O/B/O)
Michelle Vaughan, Supervisory Team Leader

Enclosure: Resolution Agreement