



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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TENNESSEE

January 23, 2019

Dr. Steven Leath
President
Auburn University
107 Samford Hall
Auburn, AL 36849
Sent to Counsel via email at: mms0116@auburn.edu

Re: OCR Complaint # 04-18-2305

Dear Dr. Leath:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has concluded its investigation of a complaint received by this office on July 5, 2018, alleging discrimination on the basis of disability by Auburn University (University). Specifically, the Complainant alleged that the University discriminated against her because the Glanton House (House), which is the site for her classes for the Master's Program for Marriage and Family Therapy, is inaccessible to her due to her disabilities.

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.

Based on the above, OCR investigated the following legal issues:

1. The House is inaccessible to the Complainant because she cannot access the upstairs observation rooms, cannot fit her wheelchair through doors and tight spaces in the downstairs area, and the House is not equipped with adequate air conditioning in order to help regulate the Complainant's body temperature required due to her disability, 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;
2. The Complainant does not have access to the programs, services and activities located on the 2nd floor of the House because she is unable to physically access the 2nd floor of the House. As an alternative, she is unable to view the videos or provide input during the live sessions that occur on the 2nd floor of the House because the video system does not function consistently and she participate in the live sessions and classes, 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; and

3. Parking at the House is inaccessible because the one designated accessible parking spot and is located on a hill, while the other designated accessible parking spots are located at the bottom of the hill, 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.

Pursuant to OCR's *Case Processing Manual* at Section 302, a complaint may be resolved when, before the conclusion of an investigation, "the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." For each issue, the University requested to voluntarily resolve this matter, prior to OCR's completion of its investigation. Accordingly, OCR has not issued findings concerning these issues. Set forth below is a summary of the evidence obtained thus far, prior to the signing of the resolution agreement.

Summary of the Investigation

The evidence gathered thus far showed that the University's Marriage and Family Therapy (MFT) Center is located in the House. The MFT is where graduate students, including the Complainant, earn their Master's degrees in marriage and family therapy. The House is the site of the primary classroom for the clinical coursework required in the MFT program. There are three floors in the House: the basement, the first floor and the second floor. Since the basement is not used for class instruction or therapy, OCR focused on the accessibility of the first and second floors.

Floor plans submitted by the University showed the following widths for each of the door openings on the first floor:

- Main Entrance from outside into the House – 36 inches
- Double doors leading into Conference Room 102 – 60 inches
- Door leading from Conference Room 102 into the Break Room – unmarked
- Door leading into Janitor's Closet – 18 inches
- Door leading into Director's Office 103A – 30 inches
- Door leading from Director's Office 103A out to Porch – 30 inches
- Door leading from Break Room 103 into hallway – 30 inches
- Door leading from hallway into back outside area – 32 inches
- Door leading to downstairs staircase – 26 inches
- Door leading into restroom – 36 inches
- Door leading into Work Room 106 – 36 inches
- Double door leading into receptionist/waiting area – 60 inches
- Door leading into Work Room 108 – 36 inches

According to the University, two parking lots serve the House: (1) the Quad Drive Western Parking Lot (Quad Lot) and (2) the Glanton Access Drive and Parking Lot (Glanton Lot). The Glanton Lot is the closest to the House. The University was unable to provide the exact date of construction for the Glanton Lot but represented to OCR that the lot has been in its current condition since 1986 and there have been no known significant upgrades or alterations since that time. Although the driveway leading up to the Glanton Lot was replaced in 2003, the parking spaces were not modified as a part of that construction. The Glanton Lot has ten (10) total parking spaces, and one of those spaces is a dedicated accessible parking space. Evidence also shows that the one dedicated accessible parking space in the Glanton Lot may require adjustments to the slope in order to comply with the applicable standards in the 2010 ADA Standards for Accessible Design pursuant to 28 C.F.R. § 35.151(c) and the Appendix to 28 C.F.R. § 35.151(c) (hereinafter, 2010 ADA Standards for Accessible Design)¹.

Lastly, the evidence showed that in order to provide the Complainant with access to the programs, services and activities located on the second floor of the House, the University proposed to provide the Complainant with virtual access – through monitors and computers located on the first floor of the House – so that she can view and participate in classes and therapy sessions located on the second floor.

As indicated above, prior to the completion of OCR's investigation, the University requested to voluntarily resolve this complaint, and OCR determined that resolution pursuant to OCR's CPM section 302 was appropriate. The attached Resolution Agreement (Agreement) will require the University to take actions to remedy the compliance concerns to ensure that the Complainant and other individuals with disabilities have access to the programs, services and activities located in the House, including the designated parking and accessible routes into and through the House.

On January 18, 2019, OCR received the enclosed signed Agreement that, when fully implemented, will resolve the allegations in the complaint. OCR will monitor the University's implementation of this Agreement to ensure that it is fully implemented. If the University fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II. The Complainant may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, 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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

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

OCR is committed to prompt and effective service. If you have any questions, please contact Jamila L. Montaque, Esq., at (404) 682-3342, or by email at jamila.montaque@ed.gov or the undersigned at (404) 974-9408.

Sincerely,

April England-Albright
Supervisory General Attorney

Enclosure