



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

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REGION IV  
ALABAMA  
FLORIDA  
GEORGIA  
TENNESSEE

July 9, 2020

Dr. Clayton Hess  
President  
Lincoln Memorial University  
6965 Cumberland Gap Parkway  
Harrogate, Tennessee 37752

Re: Complaint #04-20-2131

Dear Dr. Hess:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that you filed on January 21, 2020, against Lincoln Memorial University (University) alleging discrimination on the basis of disability. Specifically, the Complainant alleged the following:

- 1) The University does not maintain sufficient accessible parking spaces at its Veterinary College.
- 2) The University failed to provide appropriate academic adjustments with regard to flexibility in the Complainant's schedule for exams in January 2020.

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. As a recipient of Federal financial assistance from the Department, the University is subject to the provisions of Section 504.

OCR opened an investigation of the following legal issues:

1. Whether the University fails to provide sufficient accessible parking spaces to individuals with mobility disabilities at the College of Veterinary Medicine, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23.
2. Whether the University failed to provide the Complainant effective academic adjustments, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.44(a).

Prior to the conclusion of OCR's investigation, on April 20, 2020, the University identified a compliance concern and expressed a willingness to take actions to resolve Issue 1. Section 302 of

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the OCR's *Case Processing Manual* (CPM), states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination under CPM Section 303, the recipient expresses an interest in resolving the allegations *and* OCR determines that it is appropriate to resolve them with an agreement. The University voluntarily agreed to take actions to remedy compliance concerns raised by the allegation in this complaint, and the University's execution of the attached Agreement will fully resolve the compliance concerns raised in Issue 1.

Additionally, the Complainant and University representatives addressed Issue 2 through OCR's Facilitated Resolution Between the Parties (FRBP).

### **Applicable Regulations and Legal Standards**

#### **Accessibility of Facilities**

The regulations implementing Section 504 at 34 C.F.R. § 104.21 state that no qualified individual with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by a recipient because the recipient's facilities are inaccessible to or unusable by persons with disabilities. The Section 504 regulations cite to the Uniform Federal Accessibility Standards (UFAS) for the design, construction, or alteration of buildings effective as of January 18, 1991. See 34 C.F.R. §§ 104.21-104.23.

#### **Accessibility of Existing Facilities**

The standards of program access that apply to an existing facility are found at 34 C.F.R. § 104.22. Section 504 requires that the University shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.22(a). This standard does not necessarily require that the University 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. See 34 C.F.R. § 104.22(a). In choosing among available methods for meeting the program access requirements for existing facilities, the University 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. See 34 C.F.R. § 104.22(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.23(b).

#### **Accessibility of New Construction**

The implementing regulations of Section 504, at 34 CFR § 104.23, are applicable to any facility or part of a facility where construction was commenced after January 18, 1981 (Section 504). These facilities are considered "new construction or alterations." The Section 504 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 individuals

with disabilities. The Section 504 regulations set forth the specific accessibility standards to be used in new construction. See 34 C.F.R. § 104.23(c).

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineates 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 UFAS for facilities constructed or altered on or after January 18, 1991.

During OCR's investigation of Complaint # 04-20-2131, the University confirmed that it used the 2010 ADA Standards for Accessible Design (2010 ADA Standards)<sup>1</sup> for the new construction at issue in this investigation. Therefore, OCR's analysis referenced the 2010 ADA Standards during its investigation of Complaint # 04-20-2131.<sup>2</sup>

### Academic Adjustments

The Section 504 regulation, at 34 C.F.R. § 104.43(a), provides that a qualified person with a disability may not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any postsecondary aids, benefits, or services on the basis of disability. The regulation at § 104.44(a) requires a college/university to modify its academic requirements as necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of disability against a qualified student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

### Facts

During the course of the investigation, OCR reviewed documentation provided by the University, including maps and drawings that reflect the University campus parking at issue in this complaint.

### Issue 1: Accessible Parking

The University's College of Veterinary Medicine includes two buildings: the DeBusk Veterinary Training Center and the College of Veterinary Medicine.

DeBusk Veterinary Training Center (DVTC): The University completed construction on the DVTC on August 11, 2016 and applied the 2010 ADA Standards. The DVTC has a total of 255 parking spaces, including 3 designated accessible parking spaces. The 2010 ADA Standards at §

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<sup>1</sup> Located at: <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> (Last accessed 7/07/2020)

<sup>2</sup> The regulation implementing Title II and the ADA Standards for Accessible Design was amended in September 2010. Title II adopted new accessibility guidelines, the 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." For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, however, the Title II regulation provides that recipient had a choice of complying with UFAS, the ADA Standards for Accessible Design, or the 2010 ADA Standards.

208.2 require 7 designated accessible spaces per 201-300 spaces. Thus, there should be a minimum of 7 designated accessible spaces at the DVTC. Accordingly, there is an insufficient number of accessible parking spaces at the DVTC.

College of Veterinary Medicine (CVM): The University completed construction on the CVM on or about May 4, 2018 and applied the 2010 ADA Standards. The CVM has a total of 540 parking spaces, including 4 designated accessible parking spaces. The 2010 ADA Standards at § 208.2 requirement for 501 to 1000 parking spaces is 2 percent of the total number of spaces. Thus, there should be approximately 11 designated accessible parking spaces (2% of 540) at the CVM. Accordingly, there is an insufficient number of accessible parking spaces at the CVM.

## Issue 2: Academic Adjustments

As previously stated, the Complainant and the University successfully resolved Issue #2 through FRBP.

## Conclusion

### Issue 1

On July 8, 2020, the University signed the attached resolution agreement (Agreement) that requires the University to take actions in accordance with the requirements of Section 504. Specifically, in consultation with persons knowledgeable about the accessibility requirements of Section 504 and the 2010 ADA Standards, the University will install a minimum of 7 designated accessible parking spaces at the DVTC and a minimum of 11 designated accessible parking spaces at the CVM, including accessible routes. The parking spaces shall comply with § 502 of the 2010 ADA Standards or an equivalent accessibility standard.

OCR will monitor the implementation of the 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.

### Issue 2

OCR's CPM Section 204 states that at the conclusion of FRBP, OCR will obtain a copy of a statement that the allegation(s) has been resolved, signed by the complainant, or a copy of any agreement that has been signed by the parties. Once resolution of any allegation has been obtained, OCR will notify the parties in writing that the allegation(s) has been resolved. Thus, the FRBP agreement between the Complainant and the University has resolved Issue 2.

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.

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 a 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. If we receive 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, 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.

If you have any questions regarding this matter, please contact Edget Betru at (404) 974-9351, or me, at (404) 974-9356.

Sincerely,

/s/

Wendy Gatlin  
Compliance Team Leader

Enclosure