



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

VIA EMAIL ONLY TO¹ XXXXXXXX

February 12, 2021

XXXXXXXXXX

President

Miami Dade College

XXXXXXXXXX

XXX, Florida XXXX

Re: OCR Complaint # 04-20-2515

Dear XXXXXXXXXXXX:

This letter is to advise you of the outcome of the U.S. Department of Education (Department), Office for Civil Rights (OCR), complaint received against Miami-Dade College (College). The complaint alleged that the Carrie P. Meek Outreach Center (Meek Center) at the College does not provide designated accessible parking spaces in its parking lot or the overflow lot across the street and does not provide a designated accessible route from these parking lots to the Meek Center.

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. 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 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities.

Based on the above, OCR investigated the legal issue of whether the College failed to provide a) designated accessible parking spaces and b) a designated accessible route for persons with disabilities at the Meek Center, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-104.23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-35.151.

¹ If you would like a hard copy of this letter, please contact the assigned investigator at the email address below.

During its investigation, OCR reviewed data from the College and Complainant. OCR also interviewed the XXXXXXXXXX and the XXXXXXXXXX. Before OCR completed its investigation, the College expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). Allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation will be consistent with applicable regulations. Following are the relevant legal standards and OCR's summary of the investigation, to date.

Legal Standards

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.4(a) and 28 C.F.R. § 35.130(a), respectively, 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 under any program or activity which receives Federal financial assistance or is a public entity.

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively, 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 and Title II regulations contain different standards, based on when a facility was constructed or altered, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

The accessibility requirements of Section 504 are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II regulations are found at 28 C.F.R §§ 35.149-35.151. Both regulations provide generally that no qualified individual with a disability shall, because facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or denied the benefits of services, programs, or activities, or be subjected to discrimination.

The Meek Center meets the definition of a "facility" under the Section 504 and Title II regulations (see 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104.) The Meek Center is comprised of the building, the parking lots, the route from the parking lots to the buildings, and the sidewalks.

Accessibility of Existing Facilities

The standards of program access that apply to an existing facility are found at 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. Both Section 504 and Title II require that the College 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); 28 C.F.R. § 35.150 (a). This standard does not necessarily require that the College 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); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirements for existing facilities, the College 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); 28 C.F.R. § 35.150(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); 28 C.F.R. § 35.151(b).

Accessibility of New Construction

The implementing regulations of Section 504, at 34 CFR § 104.23, and Title II, at 28 CFR § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. These facilities are considered “new construction or alterations.” The Section 504 and Title II 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 and Title II regulations set forth the specific accessibility standards to be used in new construction. See 34 § 104.23(c); 28 C.F.R. § 35.151(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 the *Uniform Federal Accessibility Standards* (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineates UFAS or the *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (ADA Standards for Accessible Design) as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

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)², 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.

The Meek Center’s general student parking lot is currently being renovated; therefore, OCR used the 2010 ADA standards to evaluate the accessibility of this complaint. OCR analyzed whether the College provides designated accessible parking spaces and designated accessible route(s) into

² <https://www.ada.gov/regs2010/2010ADAStandards/2010ADASTandards.htm> (Last accessed 1/27/2021)

the Meek Center that comply with the 2010 ADA Standards. The following sections of the 2010 ADA Standards were used to determine compliance at the Meek Center:

Approach and Entrance

206.1 General. Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

206.2 Where Required. Accessible routes shall be provided where required by 206.2.

206.2.1 Site Arrival Points. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

Parking

208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.

Table 208.2 Parking Spaces

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8

Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

208.2.4 Van Parking Spaces. For every six or fraction of six parking spaces required by 208.2 to comply with 502, at least one shall be a van parking space complying with 502.

208.3 Location. Parking facilities shall comply with 208.3.

208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4. Where parking serves more than one accessible entrance, parking spaces complying with 502 shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

502.1 General. Car and van parking spaces shall comply with 502. Where parking spaces are marked with lines, width measurements of parking spaces and access aisles shall be made from the centerline of the markings.

EXCEPTION: Where parking spaces or access aisles are not adjacent to another parking space or access aisle, measurements shall be permitted to include the full width of the line defining the parking space or access aisle.

502.2 Vehicle Spaces. Car parking spaces shall be 96 inches (2440 mm) wide minimum and van parking spaces shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.

EXCEPTION: Van parking spaces shall be permitted to be 96 inches (2440 mm) wide minimum where the access aisle is 96 inches (2440 mm) wide minimum.

502.3 Access Aisle. Access aisles serving parking spaces shall comply with 502.3. Access aisles shall adjoin an accessible route. Two parking spaces shall be permitted to share a common access aisle.

502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking spaces they serve.

502.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

502.3.4 Location. Access aisles shall not overlap the vehicular way. Access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking spaces.

502.4 Floor or Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

502.5 Vertical Clearance. Parking spaces for vans and access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2490 mm) minimum.

502.6 Identification. Parking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation "van accessible." Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

502.7 Relationship to Accessible Routes. Parking spaces and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent accessible routes.

Accessible Route

402.1 General. Accessible routes shall comply with 402.

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.

403.4 Changes in Level. Changes in level shall comply with 303.

404 Doors, Doorways, and Gates

404.1 General. Doors, doorways, and gates that are part of an accessible route shall comply with 404.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall not be required to comply with 404.2.7, 404.2.8, 404.2.9, 404.3.2 and 404.3.4 through 404.3.7.

Advisory 404.1 General Exception. Security personnel must have sole control of doors that are eligible for the Exception at 404.1. It would not be acceptable for security personnel to operate the doors for people with disabilities while allowing others to have independent access.

404.2 Manual Doors, Doorways, and Manual Gates. Manual doors and doorways and manual gates intended for user passage shall comply with 404.2.

404.2.1 Revolving Doors, Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an accessible route.

404.2.2 Double-Leaf Doors and Gates. At least one of the active leaves of doorways with two leaves shall comply with 404.2.3 and 404.2.4.

404.2.3 Clear Width. Door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm).

Summary of Investigation

The Meek Center is a building on the College North campus. The front of the building faces 7th Avenue and it is bordered by 63rd Street and 64th Street. There are three parking lots at the Meek Center: an employee lot (Employee Lot) with one designated accessible parking space; a student

parking lot (Student Lot) that is unpaved with no designated parking spaces or designated accessible parking spaces; and a paved overflow lot (Overflow Lot) across the street that is available for students. The overflow lot is owned and controlled by a private corporation (Walgreens) and does not provide designated accessible parking spaces in the parking area reserved for College students.

Accessible Parking

Student Lot³

The Student Lot is an unpaved lot with no marked spaces and no designated accessible parking spaces. It was constructed in 2011 as a gravel lot. It is currently under construction to include drainage, paving, striping, and signage; therefore, the 2010 ADA Standards would apply. The Student Lot will have a total of 57 spaces, including two designated accessible spaces. Both will be van accessible. According to the College, construction is scheduled to be finished in February 2021. The 2010 ADA Standards at § 208.2 requires a total of three accessible spaces for parking lots with 51-75 spaces. Accordingly, there will be an insufficient number of designated accessible spaces in the Student Lot. The Student Lot is accessed from the street and is a separate lot from the Employee Lot. Students cannot access the paved Employee Lot from the gravel lot as there is a barrier separating the two.

Overflow Lot

In addition to the Employee Lot and Student Lot, there is a joint parking lot (Overflow Lot) across the street that is owned by Walgreens. Students are allowed to use this Overflow Lot in addition to the Student Lot. Walgreens owns the lot and there is an informal agreement that students can park in that lot. The Overflow Lot does not provide any designated accessible parking spaces and it is not marked as a College parking lot. There are approximately 23 spaces in the Overflow Lot. The age of the lot is unknown. However, since the College makes the Overflow Lot available for student parking, the College must ensure that the parking spaces available in the Overflow Lot, including the designated accessible route(s), are accessible to individuals with disabilities in compliance with the 2010 ADA Standards.

Accessible Route

The designated accessible route currently runs from the Employee Lot's designated accessible parking space east to the building, south to the ramp adjacent to the entrance, then east to the designated accessible entrance. There is also a ramp that goes north from the Employee Lot up to a door in the back of the Meek Center.

The Student Lot's planned accessible path will follow the same route as the current designated accessible route. The College represented that there will be a designated accessible route that connects the Employee Lot and the Student Lot. Students will then follow the current designated accessible route.

³ There is also a paved employee lot (Employee Lot) closest to the building that provides a designated accessible parking space. Students generally cannot use the Employee Lot and it is not at issue in the complaint allegations.

Analysis and Conclusion

Prior to the completion of the investigation, the College expressed an interest in resolving the allegation with a resolution agreement pursuant to Section 302 of the CPM. Based on its investigation to date, OCR notes some preliminary concerns that warrant entering into a resolution agreement at this stage. Specifically, the current renovations to the Student Lot do not provide sufficient number of designated accessible spaces in compliance with §208.2 of the 2010 ADA Standards. Further, the Overflow Lot that is available for student parking at the Meek Center does not include any designated accessible parking spaces. In order for OCR to make a compliance decision, OCR would need to continue its investigation to determine if the parking lots and designated accessible routes at the Meek Center comply with Section 504, Title II, and the applicable accessibility standards.

Proposed Resolution

The attached Agreement requires the College to take the actions below, in accordance with the requirements of Section 504/Title II: In consultation with persons knowledgeable about the accessibility requirements of the 2010 ADA Standards, the College will ensure that the designated accessible parking at the Meek Center, including designated accessible routes, comply with §§ 208 and 502 of the 2010 ADA Standards.

Conclusion

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

Please be advised that the College 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.

OCR Complaint No. 04-20-2515

If you have any questions, please contact Malicia Hitch, the OCR attorney assigned to this complaint, at 470-231-1994 or by email at malicia.hitch@ed.gov or me at 404-974-9354.

Sincerely,

Scott R. Sausser
Supervisory General Attorney

Enclosure

cc: XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX