



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

September 29, 2023

Emily Smith  
255 Southerland Terrace, NE, 101  
Atlanta, Georgia 30307

Re: Complaint # 04-22-2217

Dear Ms. Smith:

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights' (OCR) investigation of your complaint filed against Georgia State University (University) on June 8, 2022. You alleged that the University discriminates on the basis of disability as it relates to accessible parking. Where appropriate this letter will refer to you as the Complainant.

OCR enforces 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by certain public entities. As a recipient of Federal financial assistance from the Department of Education, the University is subject to Section 504, Title II and to OCR's jurisdiction.

OCR opened an investigation of the issue: whether the University fails to provide sufficient designated accessible parking spaces to individuals with mobility impairments, in violation of Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-151.

During the investigation, OCR reviewed the University's website, documents provided by the University including maps of the parking decks relevant to the complaint allegations and the University's policies and procedures regarding parking. OCR also conducted a site visit of the University's parking decks, including N, U and M.

Prior to the conclusion of OCR's investigation, on December 8, 2022, the University expressed an interest in resolving the allegations in this complaint. Section 302 of the OCR's *Case Processing Manual*, states that an allegation under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegation(s) **and** OCR determines that it is appropriate to resolve them because OCR's investigation has

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identified concerns that can be addressed through a resolution agreement. The University has voluntarily agreed to take actions to remedy compliance concerns raised by the allegations in this complaint, and because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The University's execution of the attached Agreement will fully resolve the compliance concerns raised in the complaint.

### **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.

#### **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 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, 1991 (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 individuals with disabilities [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 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 or the ADA Standards for Accessible Design.

During OCR’s investigation, the University provided documentation evidencing that parking deck N was built in 1971. The University stated that it was unable to locate any records relating to any alterations made to the parking areas since the original construction, including any record of resurfacing or restriping and that the standards applied in construction are not known by the University. The University informed OCR that there are no designated accessible parking spaces in Parking Deck N and that the designated accessible parking site in lieu of deck N is parking deck U built in 1968.

Accordingly, OCR determined that Parking Decks N and U are “existing” facilities as defined by Section 504, therefore ANSI 117.1-1961 standards apply. For existing facilities, each part of the program or activity, when viewed in its entirety, must be readily accessible and usable to individuals with disabilities.

## **Facts**

### *Allegation 1: Parking*

The Complainant asserted to OCR that the University does not provide any accessible parking spaces nor elevators at its Parking Deck N.

The University’s N Deck has 574 spaces. As stated above, none of the spaces is designated as accessible. The University’s U Lot is the alternative parking lot with designated accessible parking spaces.

The University reported that construction of Deck U was completed in 1968 and the standards applied in the construction of the facility are not known. The U Lot has a total of 20 parking spaces, all of which are designated as accessible.

### **ANSI 117.1-1961 standards:**

#### 4.3 Parking lots

4.3.1 spaces that are accessible and approximate to the facility should be set aside and identified for use by individuals with physical disabilities.

4.3.2 a parking space open on one side allowing room for individuals in wheelchairs or individuals on braces and crutches to get in and out of an automobile onto a level surface, suitable for Wheeling and walking, is adequate.

4.3.3 parking spaces for individuals with physical disabilities when placed between 2 diagonal or head on parking spaces should be 12 feet wide.

4.3.4 care in planning should be exercised so that individuals in wheelchairs and individuals using braces and crutches are not compelled to wheel or walk behind parked cars.

4.3.5 consideration should be given their distribution of spaces for use by the disabled in accordance with the frequency and persistency of parking needs.

4.3.6 walks shall be in conformity with 4.2.

OCR conducted an onsite visit on December 8, 2022, which confirmed that the U deck has a total of 20 parking spaces and all 20 are designated accessible parking spaces. The deck consists of one ground floor with a level and smooth pavement except some of which have shallow divots and cracks. There is mounted signage with the universal symbol for accessibility mounted on the exterior of Deck U. However, there is no mounted signage with the uniform symbol of accessibility that identifies each designated accessible parking space. During its onsite, OCR evaluated three designated accessible parking spaces and their corresponding access aisles. The access aisles measure 102-121 inches wide. The three designated accessible parking spaces were 90” wide, 115” wide and 105” wide.

#### *Allegation 2: Access to parking*

The Complainant asserted to OCR that State-issued disability placards are not sufficient evidence for access to other University parking decks with designated-accessible parking. The Complainant did not provide OCR with any additional information regarding this allegation.

The University’s parking policies posted on its website state, “Disability parking locations on-campus is only for drivers with state-issued disability license plates or state-issued disability placards. Individuals with either identification may park in any unoccupied “disability parking” space on-campus. The standard parking rates apply for all parking spaces including disability spaces.” <https://parking.gsu.edu/parking/parking-for-people-with-disabilities/#1553148847310-ce33363b-416e>.

During OCR’s investigation, the University confirmed that their parking policy requires that all individuals, including individuals with disabilities, must display either a student, faculty or visitor pass, and a state-issued disability license plate or placard to park on campus.

#### **Analysis**

On December 8, 2022, the University requested to resolve the compliance concerns regarding its parking facilities with a Section 302 resolution agreement (Agreement). OCR has not completed its investigation of each parking facility on the University campus to determine the University’s compliance with Section 504 and Title II. Accordingly, OCR has determined it is appropriate to resolve the compliance concerns raised by this complaint with a voluntary resolution agreement.

The attached Agreement requires the University to, in consultation with persons knowledgeable about the architectural accessibility requirements of Section 504 and Title II, conduct an accessibility survey of the parking available on the University's Atlanta campus, including the number of accessible spaces, access aisles, signage and designated accessible routes and entrances. The University will develop a Parking Plan, for OCR's review and approval, to provide sufficient designated accessible parking at the University's Atlanta Campus. The University's Parking Plan will ensure that it provides sufficient designated accessible parking spaces that comply with Table 208.2 of the 2010 ADA Standards and meet the requirements of 2010 ADA Standards §§ 208; 405; 502 and 503. OCR will monitor the implementation of the Agreement until the University complies, in full, with the terms and the statute(s) and regulation(s) at issue in Allegation 1.

Based on the foregoing facts regarding the University parking policies, OCR determined there is insufficient evidence of a violation of Section 504 and Title II, as it relates to Allegation 2.

### **Conclusion**

This concludes OCR's investigation of this 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 lawsuit 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 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.

If you have any questions regarding this matter, please contact Edget Betru, General Attorney at (202) 987-1870, or me, at (404) 974-9356.

Sincerely,

#####

Wendy Gatlin  
Compliance Team Leader

Enclosure