



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

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REGION IV

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June 6, 2023

Dr. Kathy Schwaig
Office of the President
Kennesaw State University
1000 Chastain Road
Kennesaw, GA 30144
Via E-Mail only to: XXXXXXXXXXXXXXXXXXXXXXXX

Re: OCR Complaint No. 04-23-2047
Resolution Letter

Dear Dr. Schwaig:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education, Office for Civil Rights (OCR) received on December 4, 2022 against Kennesaw State University (University). Specifically, the complaint alleged that the University discriminates against persons with disabilities in the administration of its parking facility(ies) that provide access to the University's Convocation Center.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 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, 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 public entities. As a recipient of Federal financial assistance from the Department of Education and public entity, the University is subject to these laws and OCR's jurisdiction.

OCR investigated:

1. Whether the University failed to provide designated accessible parking spaces for the Convocation Center that comply with the requirements of Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-104.23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-35.151.
2. Whether the University failed to maintain access to the designated accessible parking spaces when University vehicles blocked access to the designated accessible parking space(s), in non-compliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-104.23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-35.151 and 35.133.

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by fostering educational excellence and ensuring equal access.*

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Summary of Investigation

During the investigation to date, OCR reviewed documents and photographs of the parking facilities in the areas adjacent to the Convocation Center. During the course of the investigation, prior to OCR completing its investigation, the University requested to resolve this complaint under Section 302 of OCR's *Case Processing Manual*.

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 Convocation 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 Convocation Center is comprised of the building, the parking facilities, the route from the parking lots to the building, and the sidewalks.

Background

Initial construction on the University Convocation Center began in October 2002 and was completed in the Spring of 2005. There is a parking lot directly connected to the Convocation Center in the rear. Construction of the East Deck parking facility, which provides direct access to the Convocation Center, began in 2002 and was completed in 2003. Finally, the East Lot, a parking facility in the surrounding area of the Convocation Center, was constructed between 2003-2004.

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 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); 28 C.F.R. § 35.150 (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); 28 C.F.R. § 35.150(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); 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 C.F.R. § 104.23, and Title II, at 28 C.F.R. § 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 C.F.R. § 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 until March 14, 2012.

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)¹, 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.

¹ <https://www.ada.gov/law-and-regs/design-standards/2010-stds/> (last accessed on 4/10/23).

All three of parking facilities at issue were constructed prior to 2012. Therefore, OCR analyzed whether the University provides designated accessible parking spaces that comply with the ADA Standards for Accessible Design.²

Applicable Accessibility Standards

Parking

ADA Standards for Accessible Design

4.1.2(5)(a) If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible 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
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100 over 1000

Except as provided in (b), access aisles adjacent to accessible spaces shall be 60 in (1525 mm) wide minimum.

(b) One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated “van accessible” as required by 4.6.4. The vertical clearance at such spaces shall comply with 4.6.5. All such spaces may be grouped on one level of a parking structure.” *Id.* at (b).

4.30.7 Symbols of Accessibility. (1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The symbol shall be displayed as shown in Fig. 43(a) and (b).

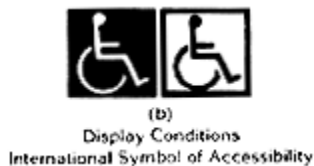
² <https://www.ada.gov/law-and-regs/design-standards/1991-design-standards/> (last accessed on 4/10/23).

Figure 43a



Proportions, International Symbol of Accessibility. The diagram illustrates the International Symbol of Accessibility on a grid background.

Figure 43b



Display Conditions, International Symbol of Accessibility. The symbol contrast shall be light on dark or dark on light.

Signage

4.1.2(7) Building Signage. Signs which designate permanent rooms and spaces shall comply with 4.30.1, 4.30.4, 4.30.5 and 4.30.6. Other signs which provide direction to, or information about, functional spaces of the building shall comply with 4.30.1, 4.30.2, 4.30.3, and 4.30.5. Elements and spaces of accessible facilities which shall be identified by the International Symbol of Accessibility and which shall comply with 4.30.7 are:

(a) Parking spaces designated as reserved for individuals with disabilities

Summary of Investigation

During the investigation, OCR reviewed the University's parking policies³ and data provided by the University, including information about the parking facilities surrounding the Convocation Center, and photos of the parking facilities. OCR also analyzed streetview photographs taken of the parking facility directly connected to the Convocation Center.

³ [Rules and Regulations - Parking and Transportation \(kennesaw.edu\)](#) (Last accessed 5/23/2023)

Analysis

According to the data provided by the University, there are three parking facilities that serve the Convocation Center. They have allocated the following parking spaces accordingly:

	Total Parking Spaces	Number of Designated Accessible Parking Spaces	Number of Designated Van Accessible Parking Spaces
Convocation Center Parking Lot	13	1	0
East Deck Parking Facility	1514	31	5
East Parking Lot	618	4	0

Convocation Center Parking Lot

According to the University, there are thirteen total parking spaces and one space is designated as accessible parking for this lot. There are currently no designated van accessible spaces for this lot. The ADA Standards for Accessible Design require every parking lot to have one van-accessible space at a minimum. Based on the number of parking spaces in the Convocation Parking, there must be at least one van-accessible space to be compliant with the ADA Standards of Accessible Design.

OCR's review of the available evidence also shows that the Convocation Parking Lot lacks the requisite signage designating the designated accessible parking space. As such, the Convocation Center Parking Lot does not meet Section 4.1.2(7)(a) of the ADA Standards for Accessible Design.

Furthermore, the designated accessible space is painted with the international symbol for accessibility, but the paint is degraded. There is a concern that it may no longer provide sufficient contrast. As required by the ADA Standards for Accessible Design, Section 4.30.7(1) requires the symbol be of sufficient contrast, and specifically as designated in the accompanying figures, light on dark or dark on light, with reference to example figures demonstrating contrast requirements.

The University's response states they have not located evidence that University vehicles have routinely blocked access to the designated accessible parking spaces. OCR took streetview photographs of the Convocation Center Parking Lot during the investigation, which reflect an image capture date of December 2021. Some of the pictures appear to show University-owned vehicle parked in such a manner that obstructs access to the designated accessible parking space.

East Deck Parking Facility

Photos submitted by the University show that the East Parking Deck lacks signage designating some accessible parking spaces on Levels 1, 2 and 5. These spaces include the international symbol for accessibility painted on the ground and blue lines, but no other required signage. Section 4.1.2(7) of the ADA Standards for Accessible Design requires signage for all “[p]arking spaces designated as reserved for individuals with disabilities.”

The symbol for accessibility painted on the designated accessible parking spaces in the East Deck uses white paint on gray pavement or light blue paint on gray pavement. The symbol has no other background color to provide contrast and does not appear to meet the requirements of Section 4.30.7(1) of the ADA Standards for Accessible Design.

East Parking Lot

The East Parking Lot has a total of 618 parking spaces, including 4 designated accessible spaces. In its response, the University acknowledged that, “additional ADA Accessible parking spaces [are] required for [the East Parking] lot. As a result, [the University] will add 9 additional ADA Accessible parking spaces.” The East Parking Lot also currently has no van-accessible spaces.

Analysis and Conclusion

Based on its investigation conducted to date, OCR identified accessibility concerns at all three parking facilities including the number of accessible parking spaces, including van-accessible spaces, appropriate signage designating accessible parking spaces, and access to accessible parking spaces.

Prior to OCR’s completion of the investigation, the University expressed an interest in resolving the complaint pursuant to Section 302 of OCR’s *Case Processing Manual*, and OCR determined that it would be appropriate to resolve this complaint under Section 302 because OCR’s investigation had identified compliance concerns that could be addressed through a resolution agreement. Once implemented, the enclosed Resolution Agreement, will resolve the compliance concerns identified during this investigation.

This concludes OCR’s investigation of the complaint. 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.

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.

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 reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact Jennifer Kwon, the OCR attorney assigned to this complaint, at 202-987-1428 or at Jennifer.Kwon@ed.gov.

Sincerely,

Michael Bennett
Supervisory General Attorney