



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

500 WEST MADISON ST., SUITE 1475
CHICAGO, IL 60661-4544

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December 2, 2015

Dr. James H. Barnes III
Office of the President
Bethel University
3900 Bethel Drive
Saint Paul, MN 55112

Re: OCR Docket #05-15-2468
Bethel University

Dear Dr. Barnes:

This is to notify you of the disposition of the complaint filed on June 22, 2015, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Bethel University (University), alleging discrimination on the basis of disability. Specifically, the complaint alleged that the University discriminated against individuals with disabilities by allowing unauthorized vehicles to park in on-campus accessible parking spaces in campus parking lots.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104. Section 504 prohibits 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. §§ 12131-12134 and its implementing regulation at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws. Additional information about the laws that OCR enforces is available on our website at <http://www.ed.gov/ocr>.

During its investigation, OCR reviewed data provided by the Complainant and the University. OCR also interviewed the Complainant and University staff. Based on this investigation, OCR has determined that the evidence is insufficient to conclude that the University engaged in disability discrimination as alleged. The bases for OCR's determination are summarized below.

Relevant University Policies

Non Discrimination Policy <https://www.bethel.edu/undergrad/student-life/community/student-handbook.pdf>

It is the policy of the University not to discriminate on the basis of race, color, national or ethnic origin, age, gender, marital status, or disability in its educational programs, admissions or

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employment policies. Inquiries regarding compliance may be directed to Director of Human Resources (appropriate contact information included) or Director of the Office for Civil Rights, Department of Education, Washington DC.

Parking for People with Disabilities <https://www.bethel.edu/security-safety/parking/regulations>

Use of a handicapped parking space is restricted to only those vehicles with a state-issued handicapped license plate or that displays a state-issued certificate. Quick errands, deliveries, or drop-offs are not valid excuses for parking in or obstructing handicapped spaces. Minnesota state law requires enforcement of handicapped spaces on a 24-hour basis, seven days a week, including holiday periods. Bethel University is not authorized to issue temporary handicapped permits. Individuals with temporary disabilities should apply for a handicapped parking certificate.

Violation Notices <https://www.bethel.edu/security-safety/parking/regulations>

Vehicles that are found in violation of the motor vehicle regulations will be given a Motor Vehicle Violation Notice. There may be a citation fee associated with the violation notice based upon a graduated fee schedule determined by the offender's violation history. Violations must be appealed within 30 days if there were extenuating circumstances surrounding the violation. The Parking Appeals Committee reviews all motor vehicle violation appeals.

Legal Standard

Disability Discrimination

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) states that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance. The Section 504 regulation at 34 C.F.R. §104.4(b)(1)(i), (ii) and (iv) provides in relevant part that a recipient shall not deny a qualified individual with a disability an aid, benefit, or service or provide such aid, benefit or service to an individual that is not equal to or is different from that provided to others because of the individual's disability.

In analyzing whether different treatment on the basis of disability has occurred, OCR first determines if there are any apparent differences in the treatment of similarly-situated individuals on the basis of disability. If such differences are found, OCR evaluates the reasons, if any, offered by the University to explain any differences in treatment to determine whether the reasons are legitimate and non-discriminatory or a pretext for unlawful discrimination. Additionally, OCR examines whether there is other information showing that a recipient treated the individual in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of disability discrimination.

Grievance Procedures

The Section 504 regulation, at 34 C.F.R. § 104.7(b) states that a recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part.

Facts

The Complainant, a disabled veteran, reported to OCR that he visits the University campus approximately four or five times a year to use the library and attend football games and concerts. The Complainant reported that on several occasions in May 2015, he witnessed cars without disability placards or license plates parked on campus in accessible parking spaces. He said that he called the University's Safety and Security office (Safety Office) to report the parking violations. The Complainant said that he was informed by a sergeant in the Safety Office that non-disabled drivers parked in accessible parking spaces was a trivial matter and that the University does not contact the local police department for these violations unless all of the accessible parking spaces are unavailable for disabled drivers. The Complainant stated that the sergeant told him that the University only has authority to give warnings or citations for violators of the University parking regulations. The Complainant informed OCR that he does not believe that the University gives warnings or citations to violators. Also, the Complainant stated that accessible parking spaces are often reserved for University board of trustee members for special events on campus such as the annual Christmas concert.

In its written response, the University denied that it allows unqualified individuals to park in accessible parking spaces on campus. The University also reported that it does not reserve accessible parking spaces for any individual for any reason. According to the Chief of the Safety Office (Chief), security officers routinely patrol all of the parking lots for a minimum of three times per day, or at least once every 8 hours, 365 days a year. During patrols, the Chief stated that security officers check to ensure that disability placards or license plates are displayed for vehicles parked in accessible parking spaces. The University stated that upon receipt of a complaint about illegally parked cars, the Safety Office staff will immediately report to the location of the parking space to determine if there is in fact an illegally parked car in the parking space. The University reported that 13 warnings or tickets have been issued within the past 24 months for parking violations in accessible parking spaces, copies of which were submitted to OCR. Offenders receive written copies of the citation and an email notification of the citation, if the offender is registered with the University. The University reported that violators are fined

\$50 for the first violation, and the fine increases progressively by \$50 up to a maximum of \$250.¹

The Security Chief said that the University does not reserve accessible parking spaces for trustee members or anyone else for large events on campus such as the Christmas concert. He said that in fact, the University will add additional accessible spaces for large events because they are aware that a large number of visitors will be on campus during that time.

The Sergeant of the Safety Office reported to OCR that he patrols the campus for approximately 6 or 7 hours per day during an 8 hour shift. He said he patrols all 13 or 14 parking lots, at least three times a day. He stated that during patrol, he is checking for broken windows, cars parked without parking permits and cars illegally parked in accessible parking spaces. He said that within the last year, he has issued three citations to cars illegally parked in accessible parking spaces.

The Sergeant said that on May 12, 2015, he received a phone call from the Complainant who reported that a car, without a disability placard or license plate, was parked in the West Lot on campus. While he was on the phone with the Complainant, the Sergeant said he dispatched a security officer to check the parking space. The security officer reported to the Sergeant that there was no vehicle parked in the space. The Sergeant said he notified the Complainant that the parking space at issue was vacant.

The Sergeant denied that he advised the Complainant that parking in accessible parking spaces was a trivial matter. The Sergeant also denied saying that the University or Ramsey County Sheriff's Office would only respond to parking violations if all the accessible parking spaces were filled as the Complainant alleged in his complaint. The Sergeant said that he has issued citations for offenders, when there was only one unauthorized car parked in an accessible parking space and the remaining accessible parking spaces were vacant.

The Sergeant said that the University handles all driving related matters and crimes on campus. The Sergeant said that the Safety Office may contact the Ramsey County Sheriff's Office if they have a chronic repeat offender of the disability parking policy and they realize that the progressive fines are not deterring an individual from parking in accessible parking spaces. The Sergeant said that he has never had to write more than one ticket for disability parking violations. The Sergeant said that if Ramsey County Sheriff's Office was on campus for a reason and they noticed a parking violation that he believes that a sheriff would issue a ticket.

¹ OCR's investigation revealed that the fines the University imposes on vehicles illegally parked in accessible parking spaces do not reflect the state-mandated accessible parking fines. The State of Minnesota's accessible parking statute, which can be located at <https://www.revisor.mn.gov/statutes/?id=169.346>, indicates that violators of accessible parking regulations are "guilty of a misdemeanor and must be fined not less than \$100 and not more than \$200." Because OCR cannot enforce state law, OCR will provide technical assistance to the University on this matter.

He said that the University does not reserve any accessible parking spaces for trustees or any other individual on campus. He recalled that he heard of one incident, before he began working at the University, where the University reserved an accessible parking space for a disabled individual on campus for an event. He said that the University has not reserved any spaces as long as he has been employed.

He said that the Safety Office does not record dispatch phone calls. He does not believe the Complainant spoke with any other security officer regarding accessible parking spaces.

Analysis and Conclusion

The evidence obtained by OCR does not establish that the University permitted unauthorized individuals to park in accessible parking spaces. OCR's investigation failed to reveal any evidence that the University reserved accessible parking spaces for non-disabled or disabled individuals on campus for special events. Based on the documentary evidence provided by the University, OCR determined that the University followed its established policies and procedures regarding parking violations as well as provided documentation of fines issued to offenders. Additionally, OCR found no evidence that similarly situated individuals were treated more favorably or any other information showing that there was evidence of disability discrimination or animus towards individuals based upon disability. Thus, OCR found that the University did not engage in disability discrimination as alleged.

However, during the investigation, OCR determined that the University does not have sufficient disability discrimination grievance procedures. The University's grievance procedures are not displayed on the University's website and fail to reference retaliation or the process for filing and resolving complaints alleging disability discrimination.

On October 28, 2015, the University offered to resolve the deficiency in the grievance procedures under Section 302 of OCR's *Case Processing Manual*. OCR determined that it is appropriate to resolve this case at this juncture. OCR would need to gather additional information, including conducting interviews with additional University security officers. In developing the proposed Resolution Agreement, OCR has ensured that the proposed remedies are aligned with the compliance problem and the information obtained during the investigation so far and are consistent with applicable regulations.

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.

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Please be advised that the University may not harass, coerce, intimidate or discriminate against any individual because he or she 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. In the event that OCR receives 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.

The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

We wish to thank you and the University staff for their cooperation during OCR's processing of this case. In particular, we wish to thank the University's legal counsel, Mr. Thomas F. Hutchinson.

If you have any questions, please contact Camille D. Lee, Civil Rights Attorney at 312-730-1561 or Camille.Lee@ed.gov

Sincerely,

Ann Cook-Graver
Supervisory Attorney

cc: Mr. Thomas F. Hutchinson, Esq. via email

Enclosure