



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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February 22, 2016

Mr. Rick Soria
Chancellor
Ivy Tech Community College
3714 Franklin Drive
Michigan City, Indiana 46360

Re: OCR Docket #05-16-2019

Dear Mr. Soria:

This is to advise you of the resolution of the above-referenced complaint filed against Ivy Tech Community College (College) with the U.S. Department of Education (Department), Office for Civil Rights (OCR).

The complaint alleged that the College discriminates against individuals with disabilities by failing to provide at the Michigan City campus an entrance that is accessible for individuals with disabilities and a route from the first floor to the second and third floors that is accessible to individuals with disabilities.

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, and 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. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance, and 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 College is subject to these laws.

Legal Standards

The implementing regulations of Section 504, at 34 C.F.R. § 104.21, and Title II, at 28 C.F.R. § 35.149, provide that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity.

The implementing regulations of Section 504, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150, are applicable to any facility or part of a facility where construction commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that with regard to such facilities, termed "existing facilities," the College will operate the programs, activities and (as to Title II) services so that, when viewed in their entirety, the

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

programs, activities, and services are readily accessible to and usable by persons with disabilities. The College may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alterations of existing facilities or any other methods that result in making each of its programs, activities, and services accessible to disabled persons. The College is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods for meeting the requirements of the statutes, the College must give priority to methods that offer the programs, activities, and services to disabled persons in the most integrated setting appropriate.

The implementing regulation of Section 504, at 34 CFR § 104.22(f), provides that the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and locations of services, activities, and facilities that are accessible to and usable by persons with disabilities. The implementing regulation of Title II, at 28 C.F.R. § 35.163(a), provides that public entities must also ensure that interested persons, including persons with impaired vision or hearing, can obtain information about the existence and location of accessible services, activities and facilities.

In assessing the accessibility of existing facilities, OCR uses the Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) as guidance.

Facts

Student A has a mobility impairment. She asserted that the College failed to provide at its Michigan City campus an entrance and route from the first floor to the second and third floors that is accessible to individuals with disabilities. Student A told OCR that the campus building has an elevator, but that it does not function properly. She said that the College offers culinary courses in the basement that she has not been able to attend and instead she is forced to take only online courses. She said that she would have been a full time student but for the accessibility issues at the campus and would have taken two or three culinary classes per term.

The Michigan City Campus consists of one building that was built in 1969. The College told OCR that it is not aware of any major renovations since initial construction. The building has three floors (basement, first, and second). There is one main entrance to the building with no alternative accessible entrance. There is no sign with the International Symbol of Accessibility at this entrance. The entrance conforms to ADAAG with regard to the clear opening width, the clear wall space on the pull side of the door, the threshold to the door, and the height of the door handle. The door handle is operable with one hand, but it requires tight grasping to open the door from outside the building; ADAAG requires that the door be operable with a closed fist. There is carpeting on both the outside of the building and inside the building at a height consistent with ADAAG, but the edges are not securely installed to minimize tripping hazards; ADAAG says that the edges of the carpeting must be secure.

The College acknowledged in its response and OCR verified during an onsite visit that the building has an elevator to gain access to the basement and second floor, but it is not functioning. Counsel for the College told OCR that the only courses that the College cannot relocate to the first floor are the culinary courses because they use a specialized lab, which is located in the basement of the building.

Analysis and Conclusion

OCR determined that, because the building was constructed in 1969, it is considered an existing facility pursuant to the accessibility guidelines. For existing facilities, a recipient may make programs, activities, and services readily accessible to and usable by individuals with mobility impairments by a variety of methods other than structural modifications, such as relocating a class to an accessible location. In this case, however, OCR determined that individuals with mobility impairments are limited in their ability to participate in the College's programs, activities, and services because 1) there is no accessible entrance because the door handle requires tight grasping to enter the building, carpets are not securely installed, and the entrance lacks a sign with the International Symbol of Accessibility; and 2) there is no accessible route to the basement, where the culinary courses are held, due to a malfunctioning elevator.

Accordingly, OCR concluded that the programs, activities, and services at the College, when viewed in their entirety, are not readily accessible to or useable by persons with mobility impairments. Therefore, OCR determined that the College is not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.22, and Title II, at 28 C.F.R. § 35.150.

The College signed the enclosed agreement (Agreement), which, when fully implemented, will fully resolve the issues covered in the complaint. The provisions of the Agreement are aligned with those issues and the information obtained during OCR's investigation and are consistent with the applicable regulations. OCR will monitor the implementation of the Agreement.

This concludes OCR's investigation of the complaint and should not be interpreted to address 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.

Please be advised that the College may not harass, coerce, intimidate, or discriminate against any individual because he or she has 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.

OCR wishes to thank the College and Mr. James Clark, Assistant General Counsel, for the cooperation extended to OCR during the course of this activity. If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact Sunita Kini-Tandon, OCR Attorney, at 312-730-1452 or by email at Sunita.Kini-Tandon@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Mr. James Clark