



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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August 29, 2017

Mr. Rob Widmer
President
Heartland Community College
Community Commons Building
1500 West Raab Road
Normal, IL 61761

Re: OCR Docket # 05-17-2250

Dear Mr. Widmer:

On April 21, 2017, U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed against Heartland Community College (College) alleging discrimination based on disability.

Specifically, the complaint alleges:

1. The upper floors of the College's Student Commons Building (SCB) and Instructional Commons Building (ICB) are not accessible to persons with limited mobility because the elevators are not maintained in operable working condition.
2. The restroom entrances in the ICB are not accessible to persons with limited mobility.

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, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134 and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department and public entities, respectively. As a recipient of Federal financial assistance and a public entity, the College is subject to Section 504 and Title II.

During its investigation, OCR reviewed documents submitted by the Complainant and the College, spoke with the Complainant, and spoke with the College's Associate Director of Equity, Compliance, and Title IX. Prior to the conclusion of OCR's investigation, the College expressed interest in resolving the complaint in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). The College signed the enclosed Resolution Agreement and submitted it to OCR on August 28, 2017, which, when fully implemented will resolve the issues raised in the complaint.

Applicable Legal Standard

Accessibility, general:

The regulation implementing Section 504, at 34 C.F.R. § 104.21, states 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, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. The regulation implementing Title II, at 28 C.F.R. § 35.149, states that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Accessibility, existing facilities:

Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. The Section 504 regulation, at 34 C.F.R. § 104.22(b), requires institutions to operate programs and activities offered in "existing facilities" so that, when viewed in their entirety, are readily accessible to persons with disabilities.

Under Title II, an "existing facility" is a building, or part thereof, where construction was commenced on or before January 25, 1992. The Title II regulation, at 28 C.F.R. § 35.120, requires public entities to 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.

In general, an "existing facility" may comply with the "program access" requirement through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs, services, or activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution or public entity shall give priority to those methods that offer programs, services and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction:

Under Section 504, any facility or part of a facility for which construction commenced on or after June 3, 1977 is considered "new construction." The Section 504 regulation, at 34 C.F.R. § 104.23, requires each such facility or part of a facility constructed by, on behalf of, or for the use of an institution to be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Any portion of an existing facility that was altered on or after June 3, 1977 is an "alteration." Under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the

maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates 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.

Under Title II, any facility or part of a facility for which construction commenced on or after January 26, 1992 is considered "new construction." The Title II regulation, at 28 C.F.R. § 35.151, requires each facility or part of a facility constructed by, on behalf of, or for the use of a public entity to be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Any portion of an existing facility that was altered on or after January 26, 1992 is an "alteration." Under Title II, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Title II regulation, at 28 C.F.R. § 35.151(c) and the corresponding Appendix, state that new construction and alterations that commenced on or after July 26, 1992 and prior to September 15, 2010 must comply with either the Uniform Federal Accessibility Standards (UFAS) or the 1991 ADA Standards for Accessible Design (1991 Standards). In September 2010, the regulations implementing Title II were amended and new accessibility guidelines were adopted. The 2010 ADA Standards for Accessible Design (2010 Standards) apply to physical construction or alterations that commence on or after March 15, 2012. Facilities constructed or altered on or after September 15, 2010 and before March 15, 2012 are in compliance with Title II if they meet the 1991 Standards, UFAS, or the 2010 Standards. OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-76 (March 14, 2012) allows use of the ADA Standards to meet the compliance requirements under Section 504.

Notice, existing facilities:

For "existing facilities," the implementing regulation of Section 504, at 34 C.F.R. § 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 location of services, activities, and facilities that are accessible to and usable by persons with disabilities." If a recipient utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

Maintenance of Accessible Facilities:

A public entity must maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II, at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance.

Factual Background

The complaint alleges an elevator in the ICB and an elevator in the SCB frequently break down, which makes the second and third floor of the buildings inaccessible to individuals with mobility issues. Although the building has other elevators that would allow access to these areas, to access these elevators requires individuals to walk over 1/8 of a mile and to travel outside. In addition, the complaint alleges that the entrances to the restrooms in the ICB are not accessible.

The College informed OCR that construction of the ICB and SBC began on July 14, 1998. Since construction was completed, the ICB had an addition built in 2003 and made various alterations to classrooms and labs between 2009 and 2013. In addition, the first floor ICB restrooms were altered in 2014 to install an ADA push button opener. Areas of the SCB were altered in 2009, 2013 and 2017. An addition was made in 2010.

The College provided information to OCR documenting the reported elevator outages for the various College elevators over the past three years that shows approximately 120 instances in which the ICB-A and/or SCB elevators were inaccessible for a period of time, either for maintenance or due to needing repairs.

The College also provided information indicating that the ICB restroom doors require more than five pounds of pressure to open, and may have inadequate closing times. The College indicated it plans to remedy these issues immediately.

Conclusion

Construction on the ICB and SCB began on July 14, 1998 and is “new construction” under both Section 504 and Title II. Therefore, OCR applies the applicable provisions of the UFAS and the 1991 Standards when determining compliance with Section 504 and Title II. However, the ICB restrooms were altered in calendar year 2014 and OCR applies the 2010 Standards when determining compliance as it relates to any alterations made to the ICB restrooms. In addition, the College reported making additions and alterations to the SCB in 2009, 2010, 2013 and 2017, and these alterations would be subject to the applicable standards.

The College expressed interest in resolving the allegations in this complaint and stated they are committed to creating an accessible campus.

The enclosed Resolution Agreement, when fully implemented, will address OCR's compliance concerns. The provisions of the Resolution Agreement are aligned with the allegations in the complaint and the information obtained during OCR's investigation, and are consistent with the applicable regulations. OCR will monitor the implementation of the Resolution Agreement until the College is in compliance with the Section 504 and Title II regulations at issue in this case.

The 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 privacy.

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

OCR would like to thank the College, particularly Terrance Bond, for the cooperation and courtesy extended to OCR during our investigation. We look forward to working with you during the monitoring of the Resolution Agreement. If you have any questions, please contact Ms. Janet Bonem, Equal Opportunity Specialist, at 312-730-1567, or Janet.Bonem@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

cc: Terrance Bond, Associate Director of Equity, Compliance & Title IX