



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 25, 2018

Mr. Alan Price
President
Earlham College
801 National Road West
Richmond, Indiana 47374-4095

Re: OCR Docket # 05-18-2089

Dear Mr. Price:

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

Specifically, the complaint alleges that the College's Center for Visual and Performing Arts (CVPA) and Stout Meeting House (Stout) are not accessible to persons with disabilities because the parking for the buildings is not in an accessible location and the routes from the parking to the buildings are not accessible.

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, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, the College is subject to Section 504.

During the investigation, OCR reviewed information provided by the complainant and the College and conducted an on-site visit to the College to review the parking lots and routes that were the subject of the complaint. Based on the information, OCR determined that the College did not comply with Section 504. The College has signed the enclosed Resolution Agreement (Agreement) to address the identified violation.

Legal Standards

Accessibility, general: The implementing regulation of Section 504, at 34 C.F.R. § 104.21, provides that no qualified person with a disability will, 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.

Accessibility, existing facilities: The implementing regulation of Section 504, at 34 C.F.R. § 104.22, is applicable to any facility or part of a facility where construction commenced prior to June 3, 1977. The regulation provides that with regard to such facilities, termed "existing

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

facilities,” the College will operate the programs and activities so that, when viewed in their entirety, the programs and activities 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 and activities 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 statute, the College must give priority to methods that offer the programs and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction: The implementing regulation of Section 504, at 34 C.F.R. § 104.23(b), is applicable to any facility or part of a facility where construction was commenced after June 3, 1977. These facilities are termed “new construction or alterations.” The regulation provides that each facility or part of a facility which is altered by or for the use of a recipient or public entity in a manner that affects or could affect the usability of the facility must, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated 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. Based on the dates of construction identified below, UFAS is the applicable standard in this case.

UFAS, at Section 4.1.1, sets forth the number of parking spaces that must be accessible. In a lot of 1 to 25 spaces, 1 must be accessible. In a lot of 26 to 50 spaces, 2 must be accessible. In a lot of 101 to 150 spaces, 5 must be accessible.

UFAS, at Section 4.6.2, says, “Parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility.”

UFAS, at Section 4.6.3, says parking spaces for disabled people must be at least 96 inches wide with a 60-inch wide access aisle. Two accessible parking spaces may share a common access aisle. UFAS also says that if accessible parking spaces for vans designed for disabled persons are provided, each should have an adjacent access aisle at least 96 inches wide.

UFAS, at Section 4.6.4, says “Accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility ... Such signs shall not be obscured by a vehicle parked in the space.”

UFAS, at Section 4.5.1, requires surfaces along accessible routes to be stable, firm, and slip-resistant. UFAS, at Section 4.3.2, says, “At least one accessible route within the boundary of the site shall be provided from ... accessible parking ... to the accessible building entrance[s] they serve.” UFAS, at Section 4.3.3, says the minimum clear width of an accessible route shall be 36 inches except at doors. UFAS, at Section 4.3.7, says, “An accessible route with a running slope greater than 1:20 is a ramp.” UFAS, at Section 4.8, says, “The least possible slope shall be used for any ramp. The maximum slope of a ramp in new construction shall be 1:12.”¹ UFAS, at Section 4.7.3, says the minimum width of a curb ramp is 36 inches.

Facts

The parking lot serving CVPA and other buildings is located to the immediate east of CVPA. The College indicated that CVPA was constructed in 2014 and the parking lot was constructed at the same time.

There are between 101 and 150 parking spaces in the lot. Six spaces are designated as accessible and are located on the north side of the lot. These spaces are not the closest spaces to CVPA but are the closest spaces to curb cuts leading to a sidewalk that individuals can traverse to reach CVPA and other buildings surrounding the lot.

The lot contains, from the northwest corner, a 95-inch wide space labeled as “van accessible,” a 98-inch wide access aisle leading to a curb ramp (Curb Ramp 1), a 94-inch wide space labeled as accessible, a 94-inch wide space labeled as “van accessible,” a 52-inch wide access aisle, a 94-inch wide space labeled as accessible, 5 spaces not identified as accessible, a 116-inch wide space labeled as accessible, a 70-inch access aisle leading to a curb ramp (Curb Ramp 2), a 101-inch space labeled as accessible, and several more spaces not identified as accessible. The bottoms of the signs designating the spaces as accessible are from 53 to 59 inches above the surface of the lot.

Curb Ramp 1 is concrete, 84 inches wide, and has a slope of 13.5% or 7.7 degrees. Curb Ramp 2 has extensive sections of chipped concrete and has a slope of 8.6% or 4.9 degrees.

The route from the parking lot to CVPA is a concrete sidewalk that is 72 inches wide and has a slight rise to CVPA, at a slope of 3.0% or 1.6 degrees.

The closest parking lot to Stout is located to the north across the street from the building, immediately adjacent to a residence hall; however, the College informed OCR during discussions regarding the Agreement that this lot is generally not available to Stout visitors because it is used by campus residents. The College indicated that Stout was constructed in 1952 and that the parking area was resurfaced in November 2015.

There are between 26 and 50 parking spaces in the lot across from Stout. One space is designated as accessible and is located in the corner of the lot closest to Stout. This space is 99

¹ A slope of 1:12 is 8.3% or 4.76 degrees.

inches wide and has an adjacent access aisle 104 inches wide. The bottom of the sign designating the space as accessible is 51 inches above the surface of the lot. At the time of OCR's visit in May 2018, to reach Stout from this space required crossing the street to a curb ramp with a slope of 7.5% or 4.2 degrees in the center but 12.1% or 6.9 degrees on its right side. The route from the curb ramp to the Stout entrance is a concrete sidewalk that is 72 inches wide.

There is also a circle drive for loading and unloading immediately in front of Stout, with four spaces; there is a curb ramp behind the last space, with a slope of 12.8% or 7.2 degrees. Signage indicates that use of this area is limited to 15 minutes. The College indicated that it constructed a new ramp for access to Stout following OCR's visit and also would designate some of the spaces in the loading zone as parking for individuals with disabilities.

Analysis and Conclusion

The lot serving CVPA has a sufficient number of spaces designated as accessible, with the spaces located closest to the route that serves CVPA and other buildings. However, only two of these spaces are sufficiently wide to meet UFAS standards, and one access aisle between two of the spaces is not sufficiently wide to meet UFAS standards. In addition, both curb ramps from the designated spaces are steeper than allowed by UFAS and one contains chipped concrete, rendering it not stable, firm, and slip-resistant.

The lot closest to Stout does not have a sufficient number of spaces designated as accessible, as UFAS requires two spaces but the lot contains only one; the space designated as accessible meets applicable UFAS requirements. In addition, the curb ramp used to get to Stout from this space is too steep on one side, as is the curb ramp used to reach Stout from the circle drive used for loading and unloading.

Based on the above, OCR determined that the College is not in compliance with the Section 504 regulations, at 34 C.F.R. § 104.23(b).

The College signed the enclosed 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 the 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 individual 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 particularly Ms. Stephanie Bishop and Mr. Ian Smith for the cooperation extended to OCR during the course of this investigation. If you or any of your staff members have any questions regarding this matter, please do not hesitate to contact Dan Altschul, Senior Attorney, at 312-730-1563 or by email at dan.altschul@ed.gov.

Sincerely,

Jeffrey Turnbull
Team Leader

Enclosure

cc: Ms. Stephanie Bishop