



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

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October 12, 2018

Dr. Wendy Wintersteen
President
Iowa State University
1750 Beardshear Hall
515 Morrill Road
Ames, Iowa 50011-2103

Re: OCR Docket #05-18-2189

Dear Dr. Wintersteen:

This letter is to notify you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), completed its case resolution processing for the complaint filed against Iowa State University (University), alleging discrimination on the basis of disability. Specifically, the complaint alleges that the University discriminates against individuals with disabilities by failing to provide an adequate number of handicap parking spaces (including van-accessible spaces) that comply with federal regulations for dimensional size, pavement striping, and signage in the parking lots the University designates as “accessible parking” for patrons attending events at the Hilton Coliseum.

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. § 12132 -12134, and its implementing regulation, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department, 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 University is subject to these laws.

During its investigation, OCR reviewed information provided by the Complainant and the University, and conducted an onsite visit to review the parking lots adjacent to the Hilton Coliseum. Prior to the conclusion of OCR’s investigation, the University expressed interest in resolving the complaint. Discussions between OCR and the University resulted in the University’s signing the enclosed Resolution Agreement (Agreement), which, when fully implemented, will resolve the issues raised in the complaint.

Legal Standards

Accessibility, general: 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.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), 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 termed "new construction or alterations." The 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 persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

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. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The Title II regulation, 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 Standards." OCR policy interpretation, for new construction and alterations commenced on or after September 15, 2010, allows recipients of Federal financial assistance from the Department to use an additional alternative accessibility standard, the 2010 ADA Standards, in lieu of UFAS for the purpose of complying with Section 504.¹

Pursuant to the 2010 ADA Standards at 208.2, the University is required to calculate the required number of accessible parking spaces, separately for each parking facility—generally one accessible space is required for every 25 regular parking spaces. One of six accessible

¹ <https://www.federalregister.gov/articles/2012/03/14/2012-6122/discrimination-on-the-basis-of-disability-in-federally-assisted-programs-and-activities>

parking spaces must be van accessible, and they can never be less than one. Accessible parking spaces must be located on the shortest accessible route of travel to an accessible facility entrance. An accessible route never has curbs or stairs, must be at least 3 feet wide, and has a firm, stable, slip-resistant surface. The slope along the accessible route should not be greater than 1:12 in the direction of travel. The 2010 ADA Standards at 208.3.1, Exception 2, allows accessible parking spaces to be clustered in one or more facilities if equivalent or greater accessibility is provided in terms of distance from the accessible entrance, parking fees, and convenience.

Accessible parking spaces must comply with the 2010 ADA Standards at 703.7.2, and include an identification sign with the international symbol of accessibility mounted 60 inches minimum above the ground surface measured to the bottom of the sign. If the accessible route is located in front of the parking space, wheel stops must be installed to keep vehicles from reducing the clear width of the accessible route below 36 inches. Access aisle width is at least 60 inches, must be at same level and same length as the adjacent parking space(s) it serves, maximum slope in all directions is 1:48, and access aisle must connect to an accessible route to the building. Two parking spaces may share an access aisle. Van accessible parking spaces must be at least 132 inches wide with a 60-inch marked access aisle or 96 inches wide with a 96-inch marked access aisle. A “van-accessible” designation is required on the sign and a 98 inch minimum vertical height clearance is required.

Relevant University Policies

The University’s Non-discrimination and Harassment policy prohibits discrimination and harassment based on physical or mental disability.² The policy further provides that any person who believes that she or he has been subjected to discrimination may file a formal written complaint with the University’s Office of Equal Opportunity (OEO) and, if an investigation is warranted, the complaint will be investigated expeditiously, consistent with the complexity and severity of the matter and availability of witnesses, within forty-five days of initiation of the formal complaint if possible. The OEO will notify the complainant in writing of the result of the investigation. The University Non-discrimination and Harassment policy is restated in the University Faculty Handbook and the Academic Year Catalog (Catalog).³

Background

Construction of Hilton Coliseum began in 1969, and the Coliseum opened to the public in 1971. The Hilton Coliseum’s parking lots were also constructed during this time period. The University submitted to OCR information indicating that there were alterations to the Coliseum’s parking lots that commenced in 2000 and have continued through 2015-2016 with additional alterations that began on or around May 5, 2018. Accordingly, OCR used the 2010 ADA Standards in determining compliance.

² See <https://www.policy.iastate.edu/policy/discrimination#Complaint>.

³ See <http://catalog.iastate.edu/previouscatalogs/2017-18.pdf> and <https://www.provost.iastate.edu/sites/default/files/uploads/faculty%20resources/policies/Faculty%20Handbook%20-%20August%202017%20-%20FINAL.pdf>.

Facts

The Complainant told OCR that she attends women's basketball and volleyball games at the Hilton Coliseum and requires a van accessible parking space because she has a mobility impairment and uses a scooter. The Complainant indicated that she is aware the Hilton Coliseum has a parking lot with permanent van accessible parking spaces (Lot B1); however, when this lot fills up, she has to park her van in Lot B2 or Lot B3, which are used as overflow lots that are designated in their entirety as handicapped accessible. According to the Complainant, Lot B2 and Lot B3 do not have any van accessible parking spaces so she has had to park in a manner attempting to take up two non-van accessible parking spaces, and has been blocked in when she returned to her van.

According to the University, the Hilton Coliseum hosts the men's and women's basketball teams, as well as the volleyball, wrestling, and gymnastic teams. The University reported that, when events requiring overflow parking are scheduled at the Hilton Coliseum, special parking rules are administered, and specific parking lots are identified and temporarily reserved for individuals with disabilities.

Specifically, the University indicated that for women's volleyball events, Lot B2 is temporarily designated and reserved, in its entirety, for handicapped parking. The University reported that Lot B2 contains 57 total spaces, all of which are temporarily designated as ADA accessible spaces. Of those 57 spaces, the University reported that it designates 11 of them as van accessible spaces.

During women's and men's basketball events, the University reported that, in addition to Lot B2, Lot B3 is temporarily designated and reserved, in its entirety, for handicapped parking. The University reported that Lot B3 contains 94 spaces, five (5) of which it reported it designates as van accessible spaces. According to the University, and confirmed by OCR during its onsite visit, Lot B2 (and lot B3 for women's basketball games) are designated as the overflow handicapped accessible lots because they are the most accessible and convenient to the accessible route to the Hilton Coliseum's West Entrance.⁴

As indicated above, OCR conducted an onsite visit to review parking lots adjacent to the Hilton Coliseum. OCR observed that the University was in the process of repaving and restriping several parking lots that serve patrons of the Coliseum, which when completed will increase the total number of permanent handicapped accessible parking spaces. With respect to Lot B2 and Lot B3, OCR observed diagonal spaces that do not have permanent access aisles of sufficient size or permanent handicapped accessible signage.⁵ However, OCR was unable to observe how these lots are temporarily identified and used (*i.e.*, spacing and aisle

⁴ The University provided OCR an overhead map showing that lot B2 is the nearest parking lot to the West Entrance, which is handicapped accessible. The overhead map also shows an accessible route directly connecting lots B2 and B3 to the accessible route to the West Entrance.

⁵ The University reported that Lot B2 and Lot B3 are overflow parking lots and are not directly adjacent to a University building.

demarcation) when designated in their entirety as accessible parking during sporting events that require the use of overflow parking lots.

Conclusion

During the course of OCR's investigation, the University advised OCR that it wished to resolve the complaint pursuant to Section 302 of OCR's CPM. OCR has determined that it is appropriate to resolve this complaint because OCR's investigation has not proceeded to a point where a finding is clear given the current status of the parking lot repaving and restriping.

The terms of the resolution agreement (Agreement) are aligned with the complaint allegation. The Agreement requires the University to provide an adequate number of accessible parking spaces, including van-accessible spaces, that meet the standards for dimensional size and signage contained in the 2010 ADA Standards in the parking lots the University designates as "accessible parking" for events at the Hilton Coliseum.

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. OCR will monitor the University's implementation of the Agreement.

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 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 suite in Federal court, whether or not OCR finds a violation.

We appreciate the cooperation you and your staff extended to OCR during the course of the processing of this complaint. We particularly appreciate the cooperation of Mr. Brett W. Lohofener, counsel for the University.

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If you have any questions regarding this letter, you may contact Roberto Flores, Equal Opportunity Specialist, at (312) 730-1688 or Roberto.Flores@ed.gov.

Sincerely,

Marcela Sanchez-Aguilar
Supervisory Attorney

Enclosure