



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

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February 17, 2023

Dr. Maria Gallo
Chancellor
University of Wisconsin-River Falls
410 S. 3rd Street
River Falls, WI 54022

Sent via email to: chancellor@uwrf.edu

OCR Case No. 05-22-2332

Dear Dr. Gallo:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the University of Wisconsin River Falls (the University) alleging discrimination on the basis of disability.

Specifically, the complaint alleges that the University discriminates against individuals with certain physical disabilities because:

1. It does not provide equal access to the amenities and programs offered in Hathorn Hall's ground level;
2. There is no accessible route between the accessible entrance of Hathorn Hall and the handicap accessible parking spaces in Lot G and Lot U; and
3. The handicap accessible showers at May Hall lack grab bars.

On December 12, 2022, additional allegations were raised against the University. The allegations allege that the University discriminates against individuals with certain physical disabilities because the kitchens in the South Fork Suites Residence Hall designated for individuals with physical disabilities are inaccessible.

OCR enforces 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, 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, which prohibits discrimination on the basis of disability by public entities. These laws also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws.

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

OCR investigated the complaint by reviewing documents provided by the Complainant and the University, interviewed University administrators, and conducted a physical review of Hathorn Hall, Wyman Hall, and South Fork Suites Residence Hall.

Prior to the completion of OCR's investigation of allegations 1, 3 and 4, the Corporation expressed interest in resolving those allegations in accordance with Section 302 of OCR's *Case Processing Manual* (CPM). OCR found insufficient evidence of a violation of allegation 2 and portions of allegation 4.

Legal Standards

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.

Background

Hathorn Hall

Hathorn Hall is a “U” shaped building located in the center of the University’s campus and was completed in three stages. It is primarily a residence hall with dual occupancy rooms, but it also contains the offices of the University’s Residence Life. The “Center” area of Hathorn Hall (Hathorn Center) was constructed first, being built in 1951. A third floor was added to Hathorn Center in 1956. The “east” side of Hathorn Hall (Hathorn East) was completed in 1961. The “west” side of Hathorn Hall (Hathorn West) was built in 1964. An elevator was added to Hathorn Hall in 1976. This was the last major renovation to the building. Hathorn Hall is considered an existing facility.

May Hall

May Hall is a residence hall located on the west side of campus and was originally built in 1963. It houses approximately 150 students. The floors are made up of dual occupancy rooms and communal bathrooms. The University renovated the building in the spring of 2020 and reopened the building to students in the fall of 2020. May Hall is considered New Construction.

South Forks Suites

South Forks Suites (South Forks) is a residence hall built in 2004-2005 and located on the east side of campus. The residence hall houses roughly 240 students and is made up of shared suites. Each shared suite contains four private rooms, a living room area, a dining room area, bathroom, and kitchenette. Each floor of South Forks has communal areas, including two kitchens that have an oven, stove, microwave, and sink. South Forks is considered New Construction.

Parking Lots G and U

Lot G is located south of Hathorn Hall and contains roughly 75 parking spaces. Two handicap accessible spaces are located on the eastern side of the lot, directly across from the southern entrance to Hathorn Hall, and there are four additional handicap accessible spaces on the western side of Lot G, which is the southwest corner of Hathorn Hall.

Lot U is located south of the Wyman Education Building and contains 18 parking spaces. Four of the 18 spaces are designated as handicap accessible. There is a wide, flat, cement sidewalk that connects Lot U and Lot G.

The surfaces of both lots are paved blacktop/asphalt, with no noticeable level changes.

University System Discrimination Policies

University Regent Policy Document 14-10 states that “discrimination on the basis of disability is prohibited” and no “individual with a disability shall be denied access to or participation in any program, service, [or] activity” offered by the University. This policy requires that the University must “Ensure that its facilities, including new and existing facilities, are accessible in a manner that is consistent with this policy and compliant with state and federal law.” Additionally, the policy states that the University must “ensure that any University program, activity or event that occurs off-campus is readily accessible to all participants in accordance with state and federal law.” The Chancellor of the University is responsible for creating and implementing policies and procedures that are consistent with Regent Policy Document 14-10. A copy of this policy is available online.¹

University Policy AP-01-125 sets up the procedures for students to request accommodations and file discrimination complaints. The policy, which is located on the University’s website², encourages individuals who believe they have been discriminated against in violation of the policy can report it online by submitting a complaint form, or by contacting the Title IX Coordinator or the Director of Human Resources.

¹ <https://www.wisconsin.edu/regents/policies/discrimination-prohibited/>

² <https://www.uwrf.edu/Administration/Policy/upload/Discrimination-Harassment-and-Retaliation-AP-01-125.pdf>

For individuals requesting disability accommodations, including housing accommodations, the University put in place policies and procedures that create an interactive process. According to the Disability Resource Center's website, students requesting reasonable accommodations must fill out an application. This application can be completed online.³ The University then requests medical documentation from the student and schedules an intake meeting. A step-by-step application process, including appeals, is provided through the Disability Resource Center's website.⁴

Hathorn Hall information and specifications

There are three exterior entrances to Hathorn Hall. The main entrance to Hathorn Hall is on the north side of Hathorn Center facing the quad and is only accessible via stairs that lead to the "first floor". The second entrance (Accessible Entrance) is on the north side of the building that is located where Hathorn Center and Hathorn East connect. This entrance has been deemed accessible because it has direct access to the elevator. The third exterior entrance to Hathorn Hall is on the south side of Hathorn East. This entrance leads to the offices of Residence Life and is not used as a public entrance.

Accessible Route

The University provides accessible parking spaces on the western and eastern edges of Lot G. Lot G is a large open space with a surface made of blacktop/asphalt, with no noticeable level changes. Between the Accessible Entrance of Hathorn Hall and the west side of Lot G, there is a sidewalk that runs along the western edge of the building next to 3rd street, up a curved incline, wraps around to the large cement area in front of Hathorn Hall, and ends by going down a slight incline outside of the accessible entrance of Hathorn Hall. This sidewalk connects to the accessible entrance of Hathorn Hall. The sidewalk was more than 36 inches wide along from the base on the incline to the top. The slope along the route, measured in four places from the bottom to the top, is 3.5 (1:28), 3.0 (1:34), 4.5 (1:23), and 3.0 (1:34). There was no noticeable incline on the large cement area located in front of Hathorn Hall. The ramp leading down to the accessible entrance is over 10 feet wide, made of cement, and consistently had a 3.5 (1:28) slope.

May Hall information and specifications

As stated previously, May Hall went through renovations in 2020. The bathrooms in May Hall were part of the 2020 renovations, and grab bars were intended to be installed. The University acknowledged that the required grab bars in the showers were not installed during the 2020 renovations as planned.

³ <https://www.uwrf.edu/EquityDiversityInclusion/Accessibility-and-Accommodations-Information.cfm>

⁴ <https://www.uwrf.edu/DRC/upload/Academic-Accommodation-Process-2022-2.pdf> & <https://www.uwrf.edu/DRC/Policies.cfm>

South Forks Suites information and specifications

Kitchenette

The kitchenette in each suite is u-shaped and includes a refrigerator, upper and lower cabinets, counter space, sink, and an additional peninsula counter completing the U-shape. Upon entering the kitchenette, the refrigerator is located immediately to the left and next to the refrigerator is a counter space containing the microwave. The counter continues around the corner to the sink. A peninsula counter extends out from the wall adjacent to the sink. This peninsula is open underneath to allow for seating. There are 11 upper cabinets lining the entire kitchenette, including over the peninsula counter. There are two lower cabinets and two drawers directly next to the refrigerator. The kitchenette in the accessible suite does not have cabinets under the sink.

The counter in front of the microwave measured 24 inches in width. The counter length along the sink side measured 47 inches, but only 12 inches of counterspace was usable due to the sink. The peninsula counter adjacent to the sink, measured 60 inches. The counters near the refrigerator and sink were 34 inches in height while the peninsula counter was 30 inches. Floor space in the kitchenette was 56 inches from the base of the refrigerator to the supports holding up the peninsula counter and greater than 60 inches from the sink to the wall opposite the sink. Floor space between the supports of the peninsula counter to the fridge is greater than 60 inches.

Communal Kitchen

The stove in the communal kitchen has four, coil burners on the top and an oven. The oven door opens down in front of the stove. Controls for the stove are on the back of the stove, above the burners. Floor space in front of the stove is greater than 60 inches to the wall and over 80 inches wide.

Analysis

Allegations 1 and 2 (Hathorn Hall)

The complaint alleges that Hathorn Hall does not have an accessible route between the handicap accessible parking spaces in Lot G or Lot U, and that the programming in Hathorn Hall's ground floor is inaccessible.

Hathorn Hall Ground Floor Program Access

Hathorn Hall, as it existed at the filing of this complaint, was completed before June 2, 1977, and is therefore considered an "existing facility" under both Section 504 and Title II. Section 504 requires the University to operate its programs and activities operated at Hathorn Hall so that, when viewed in their entirety, they are readily accessible to persons with disabilities. The implementing regulation of Section 504, at 34 C.F.R. § 104.22(f), also requires the University to

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. Title II requires any alterations to the University on or after January 26, 1992, to comply with the relevant accessibility standard at the time the alteration commenced.

OCR inspected the ground floor of Hathorn Hall and discussed program access with University employees. The elevator in Hathorn Hall does not connect to the ground floor of Hathorn Center, and it is therefore only accessible via stairs. OCR found concerns that the programming in Hathorn Hall's ground floor are inaccessible, but the University contends that they provide accessible alternatives to the programming provided in the space. On February 17, 2023, the University signed an agreement that will address OCR's concerns by, among other things, ensuring that it will provide accessible programming, enhance procedures to ensure accessible alternatives, and provide notice of these procedures.

Accessible Route

The complaint alleges that Hathorn Hall does not have an accessible route between the handicap accessible parking spaces in Lot G or Lot U.

Chapter 4 of the 2010 Standards identifies the requirements for an accessible route. Section 402 states that accessible routes consist of one or more components including walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps, elevators, and platform lifts, which all must comply with Chapter 4. The route to the accessible entrance of Hathorn Hall includes a flat walking surface in Lot G, an inclined sidewalk on the west side of the building, a flat walking surface in front of the building, and a slight decline in the sidewalk leading to the north facing accessible entrance.

Section 403 (referring to Section 302) requires the walking surface on the accessible route to be stable, firm, and slip resistant with openings in the ground floor of no more than ½ inch diameter, with changes in level greater than ½ inch to be ramped consistent with Section 405 or 406. Section 106 defines a ramp as a walking surface that has a running slope steeper than 1:20. All sections of the walking area along the inclined sidewalk, the sidewalk in front of Hathorn Hall, and the declined sidewalk leading to the accessible entrance were not greater than 1:20 and are therefore not considered ramps. The walking surfaces of the flat surface on the accessible route to Hathorn Hall are stable, firm, and slip resistant with no openings of more than ½ inch. Section 403 also sets out clear width and passing space requirements for the walking surfaces. The walking surface on the accessible route to the entrance is open and provides more than sufficient space as identified in Section 403. Because the walking surface is considered flat, handrails are not necessary.

OCR found the route between the accessible entrance in Hathorn Hall to the accessible parking spaces on the western edge of Lot G to Hathorn Hall to be accessible and in compliance.

Allegation 3 (May Hall)

The Complainant alleges that the handicap accessible showers at May Hall lack grab bars.

Upon receiving notification of this complaint from OCR, the University initiated the installation of the grab bars. The University provided OCR with documentation that a work order was placed on December 12, 2022. On February 15, 2023, the University informed OCR that it installed grab bars in 8 accessible showers located throughout May Hall. On February 17, 2023, the University signed an agreement with OCR that addresses the issue raised in Allegation 3.

Allegation 4 (South Fork Suites)

The Complainant alleges that the kitchens in the South Fork Suites Residence Hall designated for individuals with physical disabilities are inaccessible. Specifically, the Complainant identified the following areas:

- a. The width of the kitchen provides insufficient clearance between all opposing base cabinets, countertops, appliances, or walls within kitchen work areas;
- b. The counter work surface is inadequate;
- c. The accessible cabinets/storage space is insufficient;
- d. The oven provided by the University lacks controls on the front panel; and
- e. The microwave does not have adequate space to approach.

1991 Standards outline that housing units or suites must comply with section 9.2. Section 9.2.2(7) states that floor space for kitchens must meet the requirements of Section 4.2.4, that countertops and sinks be a maximum height of 34", that at least 50 percent of shelf space in cabinets shall be within the reach ranges of 4.2.5 and 4.2.6. Section 9.2.2(7) also outlines that controls and operating mechanism used in the kitchen meet the requirements of Section 4.27.

Floor Space

Section 4.2.4 of the 1991 standards requires that all forward or parallel approaches have a ground space that is a minimum of 30 inches wide by 48 inches deep. The kitchenette in South Forks Suites had 55 inches of continual floor space from the refrigerator to the supports for the island, but that there were 60 inches of maneuverable space when including the space under the island. Similarly, the approach from the entrance of the kitchen was over 60 inches.

Cabinet Space

Section 4.2.5 and 4.2.6 outline the requirements for forward and side reach, respectively. Maximum forward reach over an obstruction is determined by whether there is knee space below an object. Section 4.2.5 states that the maximum depth of an obstruction with knee space below is

25 inches. When the obstruction is less than 20 inches deep, the maximum high forward reach is 48 inches. When the depth of the obstruction is greater than 20 inches and less than 25 inches, the maximum high forward reach is 44 inches. Facing a wall, surface or element, such as a counter with no knee space, a maximum reach height is 48 inches and minimum low forward reach height is 15 inches. Section 4.2.5 states if the depth of the obstruction for a side reach is 24 inches and the maximum height of the obstruction is 34 inches, the maximum high side reach over the obstruction is 46 inches.

OCR measured the counter heights in the kitchenette of the South Fork Suites accessible suite and they were 34 inches from the ground surface. The peninsula section opposite the refrigerator measured 55 inches in length and is considered a kitchen work surface. The counter space on the peninsula area was 30 inches in height with more than 25 inches of ground space beneath. Although the counter space in the kitchenette is 34 inches in height, the cabinet storage space above the counter lies beyond the 46 inch maximum (when approached from the side) and is inaccessible, leaving only two cabinets and two drawers that are accessible. The cabinet space above the peninsula was also beyond the maximum 48 inches. In total, the amount of storage in the kitchenette is less than the 50 percent required by Section 9.2.2(7). The agreement signed by the University on February 17, 2023, requires that the University ensure the cabinets in the accessible kitchenettes comply with the 2010 Standards.

Controls

Section 4.27.2 requires that where controls are provided, it must meet the floor space requirements of Section 4.2.4. Section 4.27.3 requires that the reach ranges for controls comply with Section 4.2.5 and 4.2.6. The microwave provided in the unit was situated on a counter next to the refrigerator and was less than 20 inches away from the edge of the counter and was less than 48 inches in height. The side approach to the microwave in the kitchenette meets the requirements of 4.2.6. OCR found that the microwave controls meet the requirements of 4.27.2.

The stove provided in the communal kitchen space in South Fork Suites has a forward approach that meets the requirements of 4.2.5 but the controls for the unit were on the back of the unit, which requires individuals to reach over the hot burners to control the surface. On February 17, 2023, the University signed an agreement that requires the stove offered in the communal area of South Fork Suites to be replaced with a stove that meets the requirements of the 2010 Standards.

Conclusion

The University executed a resolution agreement (Agreement) that, when fully implemented, will address the identified violations and compliance concerns. The Agreement requires the University to: 1) create policies and procedures that will allow individuals with disabilities to access programming or services offered on the ground floor of Hathorn Hall; 2) install grab bars in May Hall that comply with the 2010 Standards; 3) replace the stove in South Fork Suites with one that meets the 2010 Standards; and 4) provide sufficient storage and cabinet space in the

South Fork Suites kitchenette to meet the requirements of the 2010 Standards. OCR will monitor the implementation of the agreement until the University is in compliance with its terms and the statutes and regulations at issue in the case. A copy of the Agreement is enclosed with this letter.

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.

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

Please be advised that the University 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 a 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.

OCR appreciates the University's cooperation throughout the investigation, especially the assistance of Noah Brisbin. If you have any questions about this letter, you may contact, Ms. Janet Bonem, Equal Opportunity Specialist, at janet.bonem@ed.gov or (312) 730-1567.

Sincerely,

Dawn R. Matthias
Team Leader

Enclosure

Cc: Noah Brisbin, *Senior System Legal Council*
Sent via email to nbrisbin@uwsa.edu