



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DALLAS, TEXAS 75201-6831

REGION VI
ARKANSAS
LOUISIANA
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TEXAS

April 20, 2017

Dr. Rodney Ellis, Chancellor
Southern University at Shreveport Louisiana
30509 Martin Luther King, Jr., Drive
Shreveport, LA 71107

RE: OCR Case No. 06162065
Southern University at Shreveport Louisiana

Dear Dr. Ellis:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against Southern University at Shreveport Louisiana (SUSLA), Shreveport, Louisiana, which OCR received on December 8, 2015. The complaint alleged that SUSLA discriminates against individuals with mobility impairments based on their disability. Specifically, the complainant alleged the following:

1. The SUSLA discriminates against individuals with disabilities because the Science Building is not accessible to or usable by persons with disabilities as the building has no elevator or stairs bannisters.
2. The SUSLA discriminates against individuals with disabilities because there is an inadequate number of accessible parking spaces for the Science Building.

This agency is responsible for determining whether entities that receive or benefit from Federal financial assistance from the Department, or an agency that has delegated investigative authority to the Department, are in compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794 (amended 1992), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under Title II, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against public entities.

OCR has determined that the SUSLA is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR has jurisdictional authority to process this complaint for resolution under Section 504 and Title II.

Please be advised that a finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination or retaliation occurred). When there is a significant conflict in the evidence and OCR is unable to resolve that conflict, for example, due to the lack of corroborating witness statements or additional evidence, OCR generally must conclude that there is insufficient evidence to establish a violation of the law.

OCR's investigation included review and analysis of documentation provided by the SUSLA, an on-site inspection of SUSLA facilities, and interviews with SUSLA officials. Based on our review and analysis of the information obtained during this investigation, OCR determined that there is sufficient evidence to support a conclusion of noncompliance with Section 504 and Title II with respect to issue 1. However, OCR determined there is insufficient evidence to support a conclusion of noncompliance with respect to issue 1. The bases for OCR's determinations are provided below.

Issue 1:

Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by SUSLA because the Science Building (with no elevator or stair bannisters) is inaccessible to or unusable by persons with disabilities, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21–104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Legal Standard

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because an entity's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the entity. The regulations implementing Section 504 and Title II each contain two standards for determining whether an entity's facilities are accessible to or usable by persons with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility.

Both the Section 504 and Title II prohibit discrimination on the basis of disability in the programs and activities of covered entities. The regulation implementing each statute requires entities subject to the statute to provide "program accessibility" in programs and activities offered in existing facilities. In addition, each regulation establishes design and construction standards for new and altered facilities.

Existing Facilities

An existing facility under Section 504 is any facility that was constructed, or for which construction was commenced, prior to June 3, 1977, the effective date of the Section 504 regulation. Under Title II, an existing facility includes facilities that were constructed, or for which construction was commenced prior to January 26, 1992, the effective date of the Title II regulation.

For existing facilities, both Section 504 and Title II require public entities and recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. (The specific language of Title II also refers to services.) Neither regulation requires public entities or recipients to make all existing facilities or every part of the existing facility accessible to and usable by individuals with disabilities, if the [service], activity, or program as a whole is accessible.

Under both regulations, program accessibility for existing facilities can be achieved by making nonstructural changes such as the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, or delivery of services at alternate accessible sites. Priority consideration, however, must be given to offering the programs or activities in the most integrated setting appropriate. It should be noted that if no effective alternatives can be provided to achieve program accessibility, a recipient or public entity is required to make necessary structural changes. These changes are to be made consistent with the requirements for new construction.

Depending on the date of construction, some facilities may be existing facilities for purposes of Title II but may also constitute new construction under Section 504 (e.g., buildings constructed on or after June 3, 1977, but before January 26, 1992.) In these cases, public entities/recipients that are covered under both Title II and Section 504 must meet the standards for existing construction under Title II and also the applicable accessibility standards for new construction and alterations under Section 504.

New Construction and Alterations

Both Section 504 and Title II require that a new or altered facility (or the part that is new or altered) be accessible to and usable by individuals with disabilities. However, there are differences in the applicable accessibility standards for new construction and alterations. Alterations standards recognize that structural impracticability or technical infeasibility may be encountered; however, new construction standards must be used in alterations whenever possible.

With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, districts had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or

altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that districts had a choice of complying with one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that districts are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. For the purposes of Title II compliance, a public entity must comply with the 2010 Standards as of March 15, 2012, even if the Uniform Federal Accessibility Standards (UFAS) remains an option under the Section 504 regulations after that date.

Findings of Fact

SUSLA officials informed OCR that the Science Building was constructed in 1964 and has not been altered since its construction except that the air conditioning system was replaced in 1994. As such, the Building is an “existing facility” under Section 504 and Title II. For an existing facility, the regulations require recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. Program accessibility for “existing facilities” can be achieved by making nonstructural changes to provide program accessibility through the reassignment of classes, moving activities to alternate accessible buildings or locations, or through the assignment of aides, etc. However, if the activity or program cannot be made accessible through nonstructural alternative means, a recipient or public entity is required to make necessary structural changes consistent with the requirements for new construction.

OCR inspected the Science Building. The first floor of the building has three entrances - North, South, and East, and a loading dock on the west side of the building for deliveries of equipment and supplies. The three first floor entrances all have two 30-inch wide doors that are not accessible to persons with disabilities. As such, the building has no accessible entrance. Inside the Science Building, an elevator provides accessibility between the first and second floors. The elevator is equipped with audible and visual signals, an emergency telephone, has Braille control buttons, and signage.

OCR’s inspection revealed that the first floor of the building has three lecture rooms and five total laboratories - Radiology, Physics, Biomedical and two Chemistry labs. The second floor of the building has two lecture rooms and four laboratories - Science, Biology, Vertebrate and Bacteriology. The laboratories contain specialized equipment such as forced air vents, piped chemicals, gasses and water, and other specific materials necessary for conducting research and experiments.

OCR interviewed the Chairman of the Science, Technology, Engineering and Mathematics (STEM) Program, to determine whether the programs and activities could be relocated to make the programs and activities accessible to individuals with disabilities through nonstructural changes such as the reassignment of classes, moving or relocating classes to alternate accessible buildings. OCR was informed that the specialized equipment in the laboratories preclude the relocation of programs and activities.

Analysis

OCR's investigation reveals that the Science Building was constructed prior to June 3, 1977, the effective date of the Section 504 regulation. As such, the building is an "existing facility." For an existing facility, the regulations require recipients to operate programs or activities so that the programs and activities, when viewed in their entirety, are readily accessible to and usable by individuals with disabilities. Because SUSLA indicated the specialized equipment of the Science laboratories prohibits the provision of program accessibility through nonstructural means, the SUSLA is required to make necessary structural changes to the Science Building in order to make the programs and activities accessible to and useable by individuals with disabilities.

As noted above, OCR determined the entrances to the Science Building do not meet accessibility requirements. Thus, the building is inaccessible to or unusable by persons with disabilities. OCR determined the evidence is sufficient to support a conclusion of noncompliance under Section 504 and Title II with respect to Issue 1.

Issue 2:

Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by SUSLA because the parking area for the Science Building (inadequate accessible parking) is inaccessible to or unusable by persons with disabilities, in violation of Section 504 and Title II, at 34 C.F.R. §§ 104.21-104.23, and 28 C.F.R. §§ 35.149-35.151, respectively.

Legal Standard

The legal standard regarding issue 2 is the same as that referenced under issue 1 above.

Findings of Fact

The complainant reported that there is no accessible parking at the Science Building. OCR inspected the area outside the Science Building. There are no nearby public parking lots serving the Science Building. The closest parking area to the Science Building is limited on-the-street parking for which there is no accessibility standard. The west side of the building has a loading dock with two parking spaces reserved for administrators contiguous to the loading dock. Under the 2010 Standards, reserved parking spaces for administrators are not considered public parking, therefore, they are not included when evaluating public or student parking requirements.

The SUSLA has two parking lots for public parking - a main parking lot that is primarily student parking but also available to the public, and an Administrative Building parking lot that has reserved spaces for administrators and visitors to the Administrative Building. Accessible parking is provided in representative numbers at both parking lots. These parking lots were restriped in December 2015, therefore, the applicable accessibility standard is the 2010 Standards.

The main parking lot primarily for student parking is located on the east side of the campus. This parking lot contains 273 parking spaces including eight accessible parking spaces. OCR inspected the accessible parking spaces. The accessible parking spaces are 20 feet in length, 8-foot wide with an 8-foot wide access aisle, the surface is level, firm and slip resistant and the parking spaces are signed with the international symbol of accessibility. This parking lot is approximately 1088 feet from the Science Building on an accessible route that is 10-foot wide with a surface that is level, firm and slip resistant. The accessible route meets the requirements of the 2010 Standards.

The administrative parking lot provides reserved spaces for administrators and visitors and is located in front of the Administrative Building fronting Martin Luther King Boulevard. This parking lot contains 25 parking spaces, including four accessible parking spaces. These accessible parking spaces are 20 feet in length, 8-foot wide with an 8-foot wide access aisle, the surface is level, firm and slip resistant and the parking spaces are signed with the international symbol of accessibility. This parking lot is approximately 690 feet from the Science Building on an accessible route that is 10-foot wide with a surface that is level, firm and slip resistant. The accessible route meets the requirements of the 2010 Standards.

The Library and Gymnasium each provide two accessible parking spaces. All other parking on the SUSLA Campus is street parking.

Analysis:

The Section 504/Title II regulations do not require a recipient to make structural changes in existing facilities. Because the SUSLA does not provide public parking in the vicinity of the Science Building, which is an existing facility as discussed above, there is no requirement under the Section 504/Title II regulations to construct a public parking lot to serve the building.

At present, the SUSLA provides parking, including accessible parking spaces, for students at the Main Parking Lot. As discussed above, an accessible route from parking to the Science Building complies with accessibility requirements.

Based on OCR's investigation and on-site inspection, OCR determined that there is insufficient evidence to support a conclusion of noncompliance with Section 504 with regard to Issue 2.

Resolution of Issue 1

With regard to Issue 1, the SUSLA must take corrective measures to provide an accessible entrance to the Science Building in compliance with the 2010 Standards. To address these compliance concerns, SUSLA submitted the attached Resolution Agreement (Agreement) on April 17, 2017, which addresses Issue 1. OCR has determined that the Agreement submitted by SUSLA, when fully implemented, will resolve the issue. Specifically, under the Agreement, SUSLA agrees to construct an accessible entrance at the Science Building and to provide an accessible route to the Science Building that meets the requirements of the 2010 Standards to ensure that individuals with disabilities can fully participate in the benefits of services, programs or activities at the Science Building.

OCR will monitor implementation of the Agreement by SUSLA to determine whether the commitments made by SUSLA have been implemented consistent with the terms of the Agreement. If OCR determines that the SUSLA does not comply with the Agreement, OCR will resume its enforcement activities.

This concludes OCR's investigation of the complaint and should not be interpreted to address the SUSLA'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 Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the SUSLA 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.

OCR would like to thank you and your staff for your cooperation throughout its investigation of this matter. If you have any questions regarding this letter, you may contact Marvin Macicek, Investigator, at (214) 661-9636, or by email at marvin.macicek@ed.gov. You may also contact Timothy D. Caum, Supervisory Attorney/Team Leader, at (214) 661-9648, or by email at timothy.caum@ed.gov.

Sincerely,

Taylor D. August, Director
Office for Civil Rights
Dallas Office

Enclosure