



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

Renaissance Tower
1201 Elm Street, Suite 1000
Dallas, TX 75270

REGION VI
LOUISIANA
MISSISSIPPI
TEXAS

August 17, 2022

Via Email

Dr. Jay Hartzell, President
University of Texas at Austin
president@utexas.edu

Re: OCR Case #06182025

Dear President Hartzell:

This letter is to inform you that 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 the University of Texas at Austin (UTA / recipient), which was received October 26, 2017. The complainant alleged that the UTA discriminates against individuals with disabilities, because the UTA's Administration Building is allegedly not accessible to individuals with mobility impairments

Under Title VI, Title IX, Section 504, and the Age Discrimination Act, OCR has jurisdiction over institutions that receive federal financial assistance from the Department and institutions for which OCR has been delegated authority from other federal agencies. Under Title II, OCR has jurisdiction over public elementary and secondary education systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools), and public libraries – regardless of whether these institutions receive federal financial assistance. Under the Boy Scouts Act, OCR has jurisdiction over public elementary schools, public secondary schools, local educational agencies and State educational agencies that receive funds made available through the Department. The UTA is a recipient of Federal financial assistance from the Department and is a public entity. Therefore, OCR had jurisdictional authority to investigate allegations of discrimination filed against the UTA.

OCR opened for investigation the following legal issue:

1. Whether persons with disabilities are denied the benefits of, excluded from participation in, or otherwise subjected to discrimination by UTA because the southwest exit from UTA's Administration Building is inaccessible to or unusable by persons with disabilities, and there is no signage to direct individuals to an accessible means of egress

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

from the building, in violation of Section 504, at 34 C.F.R. §§ 104.21-104.23, and Title II, at 28 C.F.R. § 35.149-35.151.

Summary of Investigation

During the course of OCR's investigation of the complaint, OCR received information from the complainant regarding the issue under investigation and discussed the allegations by phone with counsel for the UTA. OCR obtained evidence concerning the subject exit at the 1616 Guadalupe UTA Administration Building and discussed the issue under investigation further with counsel for the UTA. OCR's review of the evidence indicated that the subject exit was locked to the outside and lead to a staircase, which could force individuals with mobility impairments down the stairs.

Before reaching a determination, OCR and the UTA entered into a Voluntary Resolution Agreement to resolve the complaint. When fully implemented, the resolution agreement will address the evidence obtained and the issue investigated. OCR will monitor the implementation of the agreement until UTA is in compliance with the terms of the agreement and the statutes and regulations at issue in this complaint.

Background

The complainant was a student at UTA during the 2017-2018 school year. On or about October 23, 2017, she attempted to use the southwest exit of the 1616 Guadalupe UTA Administration Building. After passing through the threshold, she saw that there was a staircase she would have to use to continue exiting the building. At the time, she had a broken leg and was using a knee scooter. Due to her broken leg, she would not be able to use the staircase on her own, so she attempted to go back through the door she came but saw that re-entry was not possible. She was accompanied by a friend who was able to help her down the stairs.

Legal Standard

As a preliminary matter, 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 something is more likely to have occurred than not). 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.

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.

Analysis

Based on documents provided, OCR noted that there were accessible exits near the southwest exit that the complainant could have used. However, the southwest exit does not have signage warning individuals that there are stairs on the other side of the door. The UTA confirmed that the southwest exit door is locked to the outside due to security concerns. Once an individual passes through the southwest exit door, they must continue down the stairs since the door locks immediately. Accordingly, OCR has determined that there are concerns regarding the accessibility of the southwest exit by students with disabilities. OCR determined that resolution of the complaint prior to the conclusion of its investigation is appropriate and negotiated a voluntary resolution agreement to address the issue identified during the investigation.

Conclusion

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

Please be advised that the Recipient must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding

under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

If you have any questions or concerns regarding this letter, please contact Samire K. Elhouty, Attorney, at (214) 661-9689, or samire.elhouty@ed.gov. You may also contact me, Paul E. Coxe, Supervisory Attorney/Team Leader, at (214) 661-9608 or Paul.Coxe@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Paul E. Coxe', written in a cursive style.

Paul E. Coxe
Supervisory Attorney/ Team Leader
Office for Civil Rights
Dallas Office