



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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May 25, 2016

President Michael Crow
Arizona State University
Office of the President
Mail Code 7705
PO Box 877705
Tempe, AZ 85287-7705

Re: Arizona State University
Case Number: 08-16-2054

Dear President Crow:

We are notifying you of our decision in this case. The Complainant alleged that Arizona State University (University) discriminates on the basis of disability. Specifically, the complainant alleged designated accessible seating in Wells Fargo Arena (Arena) is inaccessible to individuals with mobility disabilities because the seating locations do not provide lines of sight comparable to those provided to other spectators.

We conducted our investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department, and Title II and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of a public entity. As a public entity that receives Federal financial assistance, the University is subject to these legal requirements.

We investigated whether the University discriminates against individuals with disabilities by not providing program access to existing elements and not ensuring a barrier-free environment in newly constructed or altered elements in violation of Section 504 and Title II.

Facts

The Arena was built in 1974 and hosts a variety of events (sporting, concerts, graduation ceremonies, etc.). The University reported that in 1995 a project was completed that included alterations to, or the addition of, wheelchair accessible seating at the top row of numerous seating sections on the concourse level in the Arena.¹

During an OCR site visit conducted on March 9, 2016, OCR assessed the wheelchair accessible seating in the Arena to determine whether the seating, as arranged, provided lines of sight comparable to those for members of the general public. [See Section 4.33.3 of the 1991 ADA Standards².] OCR considered the position of the seating in relation to the section of seating located in front of the wheelchair accessible section. Using one person that was 5'1" seated in a manual wheelchair, we placed another who was 5'

¹ As there are no accessible routes to the upper level of seating in the Arena, all wheelchair accessible seating is dispersed horizontally among sections of varying admission prices on the concourse level only.

² 1991 ADA Standards for Accessible Design (1991 ADA Standards)

10” tall directly in front of the seated person. OCR found that the wheelchair seating in all sections in which accessible seating is provided is positioned such that it provides adequate lines of sight over standing spectators to the performance area. Thus, OCR found no compliance concern as it relates to lines of sight. However, in assessing how the seating is positioned, OCR found that though the University provides a sufficient number of wheelchair spaces, many of the spaces are too narrow. Contrary to section 4.33.2 of the 1991 ADA Standards, which requires a series of spaces to have a clear ground or floor width of 66 inches (two in a series), the spaces in the arena are often 30 inches wide when measured from center stripe to center stripe, or 28 inches from stripe edge to edge.

Analysis and Conclusion

The program accessibility and architectural accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§ 104.21 – 104.23. Comparable sections of the Title II implementing regulation 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 a University’s facilities are inaccessible to or unusable by disabled individuals, be 1) excluded from participation in, or denied the benefits of services, programs or activities, or 2) otherwise be subjected to discrimination by the University.

The regulations implementing Section 504 and Title II contain two standards for determining whether a University’s programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities, the other covers new construction and alterations. Which standard applies depends upon the date of construction or alteration of the facility.

For those University facilities constructed or altered after the effective date of Section 504 and Title II, the University will ensure that its facilities are readily accessible to and usable by persons with disabilities. C.F.R. § 104.23; 28 C.F.R. § 35.151. Based on the date of the project referenced by the University (1995), we evaluated whether the University’s designated accessible seating locations complied with the 1991 ADA Standards.

We found the wheelchair accessible seating, added or altered as part of the 1995 project, does not meet the applicable accessibility standard relating to space and thus, are not accessible to or usable by persons with disabilities, under Section 504 and Title II.

In summary, we find that the University did not comply with Section 504, Title II, and their implementing regulations because many wheelchair spaces are too narrow.

We thank the University for voluntarily entering into an Agreement to resolve the accessibility issues. OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the University has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close Case Number 08-16-2054 and will send a letter to the University, copied to the Complainant, stating that this case is closed.

This letter sets forth OCR’s determination in an individual OCR cases. 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.

OCR routinely advises recipients of Federal funds that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint

investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please also note the Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions or concerns, please feel free to contact XXXX, Equal Opportunity Specialist and primary contact for this case, at XXXX or by email at XXXX, or me at XXXX.

Sincerely,

/S/

Mr. Thomas M. Rock
Supervising General Attorney

Enclosure – Resolution Agreement