



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII  
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August 25, 2017

Mark Gonzalez, Owner  
Aveda Institute New Mexico  
1816 Central SW  
Albuquerque, NM 87120

Re: Aveda Institute New Mexico  
Case Number: 08-17-2140

Dear Mr. Gonzalez:

We completed our investigation of this case and are notifying you of our determination. We received a complaint alleging that the Aveda Institute New Mexico (Institute) discriminated on the basis of disability. Specifically, the complainant alleged the Institute denied students with disabilities access to programs and activities at the Institute by prohibiting them from parking in accessible parking spaces. In addition, the complainant alleged that the Institute does not have procedures for filing complaints of disability discrimination.

We conducted our investigation under the authority of Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department.

Our investigation included a review of documentation provided by the Institute, as well as an interview with you (Institute Owner) and the Institute Director. We found insufficient evidence to support a conclusion that the Institute discriminated in violation Section 504 with respect to accessible parking as alleged. Regarding the allegation that the Institute does not have procedures for filing complaints of disability discrimination, we found sufficient evidence to conclude that the Institute discriminated in violation of Section 504. The basis for our conclusions follows.

### **Accessible Parking**

The complainant alleged that Institute staff prohibited students with disabilities from parking in the accessible parking spaces because that parking was reserved for guests.

The Section 504 regulation, at 34 C.F.R. §104.43(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any educational program of a recipient. Additionally, the regulation at 34 C.F.R. § 104.21 states that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in or otherwise be subjected to discrimination in any recipients' program.

According to the Institute, the Institute Director noticed that a student with a disability was parked in an accessible parking space and asked the student's instructor to suggest that she park in the front row, rather than the accessible spaces, which would be closer to the door students use to enter the building. (The Institute noted that students are not ordinarily allowed to park in the front row.) The Institute stated that this arrangement gave the student easier access to the building and would keep the accessible parking spaces open for customers.

The Institute Owner confirmed that he requested that students and employees park at the back of the building to leave the parking near the front entrance open for clients. (He noted that the accessible parking spaces are located near the front entrance.) The Institute Director explained that she was trying to help the student by suggesting that she park near the door used by students so she did not have as far to go to the classroom at the back of the building. She said she never told the student that she could not park in the accessible parking spaces. She and the Institute Owner characterized the conversation as a misunderstanding and reiterated that students with disabilities are not prohibited from parking in the accessible parking spaces. The Director observed that the student in question now alternately parks in the front row near the entrance used by students or in the accessible parking spaces near the front entrance. OCR attempted to confirm with the complainant that students with disabilities are allowed to park in accessible parking spaces but she did not respond to our inquiries.

Based on the above, OCR found insufficient evidence to establish that the Institute prohibits students with disabilities from parking in accessible parking spaces. Accordingly, we concluded that the Institute did not violate Section 504 as alleged.

### **Grievance Procedures**

The complainant alleged that the Institute had no procedures for filing an internal grievance based on disability.

The Section 504 regulation, at 34 C.F.R. §104.8(a) and (b), requires a recipient employing 15 or more persons to take appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability. The notification must also identify the responsible employee designated under 34 C.F.R. §104.7(a) to coordinate its efforts to comply with the regulation. Additionally, the Section 504 regulation, at 34 C.F.R. §104.7(a), requires a recipient that employs 15 or more persons to designate at least one person to coordinate its efforts to comply with and carry out its responsibilities under Section 504. Moreover, the Section 504 regulation, at 34 C.F.R. §104.7(b), requires a recipient employing 15 or more persons to adopt grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination.

OCR examines a number of factors in evaluating whether a recipient's grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties;

adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

We found that the Institute employed 30 people and was, therefore, subject to the requirements of the Section 504 regulation outlined earlier. OCR reviewed the Institute's website and its Student Handbook, effective February 2017, which is available on the Institute's website. We found that neither the website nor the Student Handbook identified the Institute's Section 504 compliance officer. With regard to a statement of nondiscrimination, we found, in the Student Handbook, a section titled "Handicap Policy," which stated: 1) that the Institute complies with the American with Disabilities Act of 1990 because the facilities are wheelchair accessible and 2) the Institute does not discriminate in its admissions practices or other policies against physically challenged persons. OCR found no nondiscrimination statement on the Institute's website nor was there a statement in the Student Handbook more generally prohibiting discrimination on the basis of disability.

The Institute provided a copy of its "Student Grievance Policy" (Policy). The Institute stated, and OCR confirmed, that a copy of the Policy is included in the Student Handbook which is available to each student on the Institute's website. The Institute Owner did not identify a grievance procedure specifically for complaints of disability discrimination. We reviewed the Policy and identified concerns. Specifically, the Policy did not state that it was for the purpose of filing and resolving disability discrimination complaints. Additionally, the Policy applies only to students and not to employees or third parties; it does not provide parties with the opportunity to present witnesses and other evidence; it does not require notice to the parties of the outcome of the complaint nor does it contain an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects

Based on the above, we found by a preponderance of the evidence that the Institute does not have procedures for filing complaints of disability discrimination as alleged. Additionally, we found the Institute has not taken appropriate and continuing steps to notify program participants, beneficiaries, applicants, employees, and unions or professional organizations that it does not discriminate on the basis of disability nor has it identified a Section 504 compliance officer. Accordingly, we concluded that the Institute violated Section 504 as alleged.

We thank the Institute for voluntarily entering into an Agreement to resolve these compliance concerns. 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 08-17-2140 and will send a letter to the Institute, copied to the complainant, stating that this case is closed.

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.

Individuals filing a complaint or participating in the investigation process are protected from retaliation by Federal law.

Under the Freedom of Information Act, we may release this document and related correspondence and records upon request. If we receive a request, we will protect personal information to the extent provided by law.

If you have questions, please contact XXXXXX, Attorney Advisor, at XXXXXXXXXXXX or me at 303-844-5927.

Sincerely,  
/S/

Thomas M. Rock  
Supervisory General Attorney