



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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REGION VIII

ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

March 24, 2023

President Garnett S. Stokes  
Office of the President  
Scholes Hall, Suite 144  
Albuquerque, NM 87131-001

By email only to [presidentstokes@unm.edu](mailto:presidentstokes@unm.edu)

Re: OCR Complaint No. 08-23-2014  
University of New Mexico

Dear President Stokes:

On October 26, 2022, the United States Department of Education (Department), Office for Civil Rights (OCR) received a complaint against the University of New Mexico (University). The complaint alleges that the University discriminates on the basis of disability by failing to advertise the availability of assistive listening devices at Popejoy Hall (Hall) and failing to provide operational assistive listening devices that are hearing-aid compatible.

Because OCR has jurisdiction and the complaint was filed timely, OCR initiated an investigation pursuant to 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, which prohibits discrimination on the basis of disability by public entities.

**Investigation Summary**

OCR notified the University and the Complainant on December 21, 2022, that OCR opened the allegation for investigation. OCR's investigation included interviewing the Complainant; reviewing documentation provided by the Complainant; reviewing the data response provided by the University; reviewing publicly available information; and speaking with University counsel regarding the complaint. On February 28, 2023, before OCR had the opportunity to complete its investigation, the University expressed interest in resolving these allegations. OCR determined a resolution prior to completion of its investigation was appropriate and on March 24, 2023, the University entered into a Resolution Agreement (Agreement) with OCR to resolve the complaint allegations. The following is a discussion of how OCR came to this determination.

## **Legal Standards**

### *General Standards*

Section 35.130(a) of Title II provides that no qualified individual with a disability shall, on the basis of disability, 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.

Section 35.151(c) of Title II states that the 1991 ADA Standards for Accessible Design (1991 Standards) apply to physical construction or alterations commenced after July 26, 1992, but prior to September 15, 2010; the 1991 Standards or the 2010 ADA Standards for Accessible Design (2010 Standards) apply to physical construction or alterations that commence on or after September 15, 2010, and before March 15, 2012; and that the 2010 Standards apply to physical construction or alterations that commence on or after March 15, 2012.

Section 35.160 of Title II states that a public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others<sup>1</sup> and requires a public entity to furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.<sup>2</sup> Section 35.104 of Title II defines auxiliary aids and services to include assistive listening devices and assistive listening systems.

### *Assistive Listening Devices*

Section 219 of the 2010 Standards states that in each assembly area where audible communication is integral to the use of the space, an assistive listening system shall be provided that complies with Section 706 of the 2010 Standards.<sup>3</sup> The 2010 Standards define an assembly area, in relevant part, as a building or facility used for the purpose of entertainment, educational or civic gatherings, or similar purposes and state that this includes auditoria, theaters, concert halls, and centers for the performing arts.<sup>4</sup>

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<sup>1</sup> See Section 35.160(a)(1) of Title II.

<sup>2</sup> See Section 35.160(b)(1) of Title II.

<sup>3</sup> There are two exceptions to this provision: (1) where a building contains more than one assembly area and the assembly areas required to provide assistive listening systems are under one management, the total number of required receivers shall be permitted to be calculated according to the total number of seats in the assembly areas in the building provided that all receivers are usable with all systems; and (2) Where all seats in an assembly area are served by an induction loop assistive listening system, the minimum number of receivers required by Table 219.3 of the 2010 Standards to be hearing-aid compatible shall not be required to be provided.

<sup>4</sup> See Section 106.5 of the 2010 Standards.

The 2010 Standards require that:

- Receivers required for use with an assistive listening system shall include a 1/8 inch (3.2mm) standard mono jack;<sup>5</sup>
- Receivers required to be hearing-aid compatible shall interface with telecoils in hearing aids through the provision of neckloops;<sup>6</sup>
- Assistive listening systems/devices shall be capable of providing a sound pressure level of 110dB minimum and 118dB maximum, with a dynamic range on the volume control of 50dB;<sup>7</sup>
- The signal-to-noise ratio for internally generated noise in assistive listening systems/devices shall be 18dB minimum;<sup>8</sup> and
- Peak clipping shall not exceed 18dB of clipping relative to the peaks of speech.<sup>9</sup>

Section 219 of the 2010 Standards states that receivers shall be provided for assistive listening systems in each assembly area, in accordance with Table 219.3. For assembly areas with a capacity of 1,001 to 2,000, which includes the Hall with a capacity of up to 1,985 patrons, this table requires that there be at least 35 receivers, plus 1 receiver per 50 seats over 1,000 seats, and that at least 1 per 4 receivers are required to be hearing-aid compatible. This calculates out to require the Hall to have at least 55 receivers and at least 13 of the receivers are required to be hearing-aid compatible.

### *Signage*

Section 216.10 of the 2010 Standards require that each assembly area required to provide assistive listening systems shall provide signs informing patrons of the availability of the assistive listening system. The signage informing patrons of the availability of listening systems is required to be either at each ticket office/ticket window or at each assembly area.

The assistive listening signs are required to comply with Section 703.5 of the 2010 Standards, which outlines requirements for the visual characters on the signage and shall include the International Symbol of Access for Hearing Loss<sup>10</sup>.

### **Background and Facts**

The Hall is a concert hall and performance venue on the University's campus, whose mission statement is to provide access to the performing arts for all New Mexicans. Their website<sup>11</sup> describes the Hall as "the premier performing arts center in New Mexico." The Hall's website

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<sup>5</sup> See Section 706.2 of the 2010 Standards.

<sup>6</sup> See Section 706.3 of the 2010 Standards.

<sup>7</sup> See Section 706.4 of the 2010 Standards.

<sup>8</sup> See Section 706.5 of the 2010 Standards.

<sup>9</sup> See Section 706.6 of the 2010 Standards.

<sup>10</sup> See Section 703.7.2 of the 2010 Standards.

<sup>11</sup> The Popejoy Hall website is available: <https://www.popejoypresents.com/>.

further states that there was a major renovation of the Hall in 1996<sup>12</sup> and a seating replacement in 2007. The Hall's website states it has a capacity of up to 1,985 patrons.

The Complainant is a community member who has attended multiple events and performances at the Hall and who uses a hearing aid. The Complainant reported that he attended three events at the Hall in October 2022 and checked out a hearing-aid compatible Assisted Listening Device (ALD), a neckloop, from the Hall's information kiosk. The Complainant reported that at each event he attended, there was not visible signage advertising the presence of an assisted listening system or the availability of ALDs that individuals could borrow. The Complainant reported that at all three events the neckloops he checked out from the Hall's information kiosk did not function properly. The Complainant said he contacted the Hall in response to an email from the Hall requesting feedback on the events he attended to report that he had issues with the ALDs, but did not hear back from the University based on the feedback he gave the Hall. The Complainant reported that he has heard from other individuals that they have also had issues with the ALDs at the Hall not functioning properly.

The University's Data Response reported that the Hall provides two types of ALDs to patrons – antenna style ALDs and T-coil ALDs. The University stated they have 25 total antenna style ALDs and 15 total T-coil ALDs, 5 of which are currently not functional and being repaired. Because the Hall has a capacity up to 1,985 individuals, the 2010 Standards require the Hall have at least 55 receivers, with at least 13 of those being hearing-aid compatible.

In the University's Data Response, the University acknowledged that there are currently no specific signs to advertisements located within the Hall regarding the availability of ALDs, though the availability of ALDs are advertised on the Hall's website. The University's Data Response stated that there is a kiosk in the common lobby area, which individuals can visit to borrow ALDs. The University reported that the availability of ALDs is advertised on the Hall's website in two locations – on the main website under the tab, "Accessibility," and under a tab labeled "Accessibility" that is available on the website for each upcoming event that links the user back to the "Accessibility" tab. At the "Accessibility" tab, under the section regarding Auditory and Visual Accommodations, there is a tab for "Assisted Listening Devices," which states that the Hall has two types of assisted listening devices (ALDs), one of which is compatible for those who wear T-coil Hearing Aids, available for check out at the information kiosk in the main lobby with the exchange of a valid photo ID.

Based on the information obtained during the investigation, OCR identified concerns that (1) the Hall does not have the minimum number of receivers and functioning hearing-aid compatible ALDs in compliance with the 2010 Standards; and (2) although the availability of ALDs is advertised on the Hall's website, there is no signage in the Hall as required by the 2010 Standards.

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<sup>12</sup> Information provided by the University in their data response states that these major renovations occurred in 1987, but the Hall's website states there were major renovations in 1996.

## **Resolution**

Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement. OCR has determined that the concerns identified during the course of the investigation can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint.

On March 24, 2023, the University signed the enclosed Agreement with OCR. When fully implemented, the Agreement will resolve the allegations raised in this complaint. The provisions of Agreement are aligned with the allegations and the information that was obtained during OCR's investigation, and the provisions of Agreement are consistent with the applicable statute and regulations. OCR will monitor the University's implementation of the Agreement until the University is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of Agreement and will promptly require actions to address such deficiencies.

OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. OCR will closely monitor the recipient's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the recipient's policies and practices are administered in a nondiscriminatory manner. When the Agreement is fully implemented, the allegations will have been resolved consistent with the requirements of Title II, and its implementing regulations. If the University fails to implement the Agreement, OCR will take appropriate action, which may include enforcement actions, as described in the Agreement.

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.

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, it will seek to protect, to the extent provided by law, personal information, which if released, could constitute an unwarranted invasion of privacy.

Please be advised that the University 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.

We thank the University for being willing to voluntarily address the allegations and concerns raised by the complaint. We appreciate the University's attention to this matter and look forward to working with the University to meet the terms of the Agreement.

If you have any questions, please contact XXX, the Attorney assigned to this complaint, at XXXX or by email at [XXXX](#). You may also contact me at XXX or by email at XXX.

Sincerely,

/s/

Michael D. Todd  
Supervisory Attorney

Attachment – Resolution Agreement