



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

December 21, 2015

Kathryn E. Jeffery, Ph.D.  
President  
Sacramento City College  
Rodda Hall North, RHN 277  
3835 Freeport Boulevard  
Sacramento, CA 95822

(In reply, please refer to case no. 09-15-2104)

Dear Dr. Jeffery:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Sacramento City College (College). The complainant<sup>1</sup> alleged that she was excluded from participation in various College programs and activities because they were physically inaccessible to her due to the inoperability of features of elements designed to provide access.<sup>2</sup>

OCR investigated the complaint under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (ADA), as amended by the Americans with Disabilities Act Amendments Act of 2008, and their implementing regulations. Section 504 and Title II prohibit discrimination based on disability in programs and activities operated by recipients of federal financial assistance and by public entities, respectively. The College receives Department funds, is a public entity, and is, therefore, subject to the requirements of Section 504, Title II, and their implementing regulations.

As part of its investigation, OCR received and considered documents, records, and other information submitted by the complainant and the College.

Before OCR completed its investigation, the College offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues and OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." This letter

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<sup>1</sup>OCR identified the complainant in its initial notification letter to the College but is not providing her name here in the interest of protecting her privacy.

<sup>2</sup>OCR also accepted an allegation regarding features of a women's restroom in the North Gym and it was resolved separately by the College when it provided or changed the requested features.

summarizes applicable legal standards, the evidence that OCR obtained thus far in its investigation, and the terms of the resolution reached with the College.

### **Legal Standards**

The program accessibility requirements of the Section 504 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 that no qualified person with a disability shall, because a college's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity of the college.

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 CFR § 35.150, apply to “existing facilities,” defined as any facility or part of a facility where construction was commenced prior to June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that, with respect to existing facilities, the college shall operate its programs and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities.

Accessibility of existing facilities is determined not by compliance with a particular architectural accessibility standard, but by considering whether the program or activity, when viewed in its entirety, is accessible to and usable by individuals with disabilities. However, in evaluating existing facilities, facility accessibility standards such as the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS) may be used as a guide to understanding whether persons with disabilities can participate in the program, activity or service.

A college may comply with the existing facility standard through the reassignment of programs and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs and activities accessible to disabled persons. A college is not required to make structural changes in existing facilities where other methods are effective in achieving compliance. In choosing among available methods, a college must give priority to those methods that offer programs and activities to disabled persons in the most integrated setting appropriate. If a public entity chooses to use an automatic door opener to provide access, then it must maintain the opener in operable working condition except in situations of repair or maintenance. 28 C.F.R. § 35.133.

Section 104.22(f) also requires a college to adopt and implement procedures to ensure that, as to existing facilities, interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II implementing regulations, at 28 C.F.R. § 35.163(a), has similar requirements.

Section 104.23 of the Section 504 regulations, and § 35.151 of the Title II regulations, are applicable to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of a college shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of a college in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Title II regulations, at 28 C.F.R. § 35.133, obligate colleges to maintain in operable condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. However, isolated or temporary interruptions in service or access due to maintenance or repairs is permissible under the regulations.

### **Factual Background**

The College, founded in 1916, is one of four members of the Los Rios Community College District and it offers associate degrees in various subjects. It has approximately 24,000 enrolled students and moved to its present location in 1926.

The complainant is a student at the College who has reduced upper body strength due to disability and this precludes her from opening heavy doors.<sup>3</sup> When the complainant encounters a heavy door at the College when she attends classes or otherwise uses a program and activity offered by the College, she opens it by using an automatic or power door opener that has been installed at various doors throughout the campus. An automatic door opener is designed to provide access through a door to individuals with disabilities by opening the door to which it is attached after the individual has taken some action to trigger the door to open (in the case of the College, pushing of a “push plate” at or near the door’s location that is marked with the international symbol of accessibility).

Beginning in 2015, the complainant began to encounter situations where the automatic door openers for specified doors were inoperable at the College’s Lusk Center and Rodda North building. When the automatic door openers were inoperable, the only means of access available to the complainant was to try to manually open the door herself. However, she reported to OCR that many of the doors were too heavy<sup>4</sup> for her to open and she could not, therefore, go through the door to access a program or activity of the College.

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<sup>3</sup>The College has not disputed that the complainant is a qualified individual with a disability.

<sup>4</sup>The determining factor in evaluating accessibility compliance for a door is the opening pressure or force required to open a door. Thus, for purposes of this letter, OCR’s use of the term “heavy” is intended to reflect a door that requires too much pressure or force to open.

The College reported to OCR that the Lusk Center and Rodda North Building were constructed in 1938 and 1975, respectively. The south and north wing of the Lusk Center were modified in 2000 and 2014, respectively. The Rodda North Building has not been altered or modified since its original construction. All of the doors on the two buildings either meet the maximum force pressure permitted by the accessibility standards in order to open them or have automatic door openers attached to them which are designed to make them accessible to individuals with disabilities.

The College has acknowledged to OCR that, at times, some of the automatic door openers it has installed at the two buildings have become inoperable. OCR reviewed records that the College prepared at times when some of its automatic door openers were inoperable. The records reflect that, in many instances when the automatic door openers became inoperable, the resulting force pressure required to open the doors exceeded that permitted by the accessibility standards. Thus, the doors might have been inaccessible to individuals with disabilities.

In those situations in which a door has become inaccessible due to an inoperable door opener, the College is required to provide access to any program or activity rendered inaccessible by the inoperability through another means. This may include an alternative way of providing access through the door, such as propping it open or providing the program or activity in an alternative accessible location.

OCR reviewed the College's policies and procedures in order to determine what process was in place in order for students and others to be provided access to programs and activities whenever a means of access to the program or activity was inoperable, such as automatic door openers that did not function. OCR was not able to locate a written process that meets the requirement. The College represented that such a process is known by pertinent staff despite it not being formalized in any written document. The process is not disseminated to students with disabilities.

### **Summary and Resolution**

OCR's investigation revealed concerns with respect to the lack of a written policy that governs how the College will address issues created by accessible features becoming inaccessible due to inoperability, including the process by which the College responds to such issues, how the College provides access in such situations, and how students are advised of the process. It also raised concerns about the College's process for tracking and collecting information about inoperable features in order to timely resolve issues identified.

Prior to concluding its investigation and to address the issues alleged in the complaint, the College, without admitting to any violation of law, requested to resolve the matter. The enclosed resolution agreement is aligned with the complaint allegation and the information obtained by OCR during its investigation.

Pursuant to the agreement, the College has committed to adopting a written procedure that addresses situations when accessible features are rendered inaccessible due to inoperability. Specifically, the procedure will: inform students and others to whom they should report inoperability of accessible features; provide a process by which the College will address and remedy the inoperability once it receives notice of such; provide that the College will take additional measures to ensure program access in the event the inoperability cannot immediately be cured; provide for the posting of a notice of inoperability at the location of the impacted feature that provides information about a point of contact to whom individuals may address inquiries or requests while the feature remains inoperable; and, advise students and others of the College's grievance procedure in the event of dissatisfaction with the College's actions addressing the inoperable feature.

The agreement also requires the College to maintain a written log of inoperable features that affect accessibility and to publish or disseminate to students the previously stated procedure that it develops.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently. This should not be interpreted to address the College's compliance with any other statutory or regulatory provision or to address any issues other than those addressed in this letter.

The resolution agreement is intended, when fully implemented, to ensure the College's compliance with Section 504 and Title II and their regulations, which are at issue in this case, and OCR will monitor the implementation of the agreement until the College is in compliance with Section 504, Title II, and their regulations.

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.

Please be advised that the College 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 a complaint with OCR 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Thank you and your staff, specifically Vice President Laduan Smedley, for your assistance and cooperation in resolving this matter. If you have any questions about this letter, please contact Alan Konig, Civil Rights Attorney, at (415) 486-5527 or [Alan.Konig@ed.gov](mailto:Alan.Konig@ed.gov).

Sincerely,

/s/

James M. Wood  
Team Leader

encl.

cc: Laduan Smedley, Vice President of Administrative Services