



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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REGION IX
CALIFORNIA

March 30, 2017

Edward Knudson
Superintendent / President
Antelope Valley College
3041 West Ave K
Lancaster, California 93536

(In reply, please refer to case no. 09-16-2319.)

Dear President Knudson:

The U.S. Department of Education, Office for Civil Rights (OCR), has resolved the above-referenced complaint against Antelope Valley College (the College). OCR began an investigation into the following issues:

- Whether, during April and May, 2016, the College failed to ensure that the Complainant¹ could participate in the education program in a nondiscriminatory manner when she had difficulty attending classes while she recovered from a broken foot.
- Whether the Business Education, Health and Sciences Education, and APL buildings are accessible to individuals with disabilities. Specifically, whether:
 - (a) the buildings had accessible parking during the last three weeks of the spring 2016 semester while College parking lots were under construction;
 - (b) the sand area near the entrance to the APL building is accessible;
 - (c) the APL building was accessible given the presence of double doors inside the building that did not open automatically; and
 - (d) the women's bathroom in the APL building was accessible to individuals with disabilities given that the door opened outward.

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

¹ OCR previously provided the College with the identity of the Complainant. OCR is not including her name in this letter to protect her privacy.

OCR gathered evidence in this investigation by reviewing documents and correspondence provided by the Complainant and the College, and by interviewing the Complainant and staff of the College. This letter summarizes the applicable legal standards, the relevant facts obtained during the investigation, and the terms of the resolution reached with the College.

Issue 1: *Whether, during April and May, 2016, the College failed to ensure that the Complainant could participate in the education program in a nondiscriminatory manner when she had difficulty attending classes while she recovered from a broken foot.*

Legal Standards

The Section 504 regulations, at 34 C.F.R. §104.44(a), require recipient colleges and universities to make modifications to their academic requirements that are necessary to ensure that such requirements do not discriminate, or have the effect of discriminating, against qualified individuals with disabilities. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific required courses, and adaptation of the manner in which courses are conducted. However, academic requirements that recipient colleges and universities can demonstrate are essential to the program of instruction being pursued or to any directly related licensing requirement will not be regarded as discriminatory.

Under the Title II regulations, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), public colleges and universities may not afford a qualified individual with a disability opportunities that are not equal to those afforded others, and may not provide aids, benefits or services that are not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others. Under 28 C.F.R. §35.130(b)(7), public colleges and universities must make reasonable modifications in policies, practices or procedures when necessary to avoid discrimination on the basis of disability, unless doing so would fundamentally alter the nature of the service, program or activity.

The Section 504 regulations, at 34 C.F.R. §104.43(a), also provide 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 postsecondary education program of a recipient. The Title II regulations, at 28 C.F.R. §35.130(a), contain a similar prohibition applicable to public postsecondary educational institutions.

Findings of Fact

- The Complainant is a XX-year-old student (the Student) who was attending the College two days a week when she broke her foot on April X, 2016. The Student was on crutches from April XX, 2016 for the remainder of the semester, which ended June 3, 2016.

- When the Student returned to campus, she went to the Office for Students with Disabilities (OSD) and met with the Director of the OSD. The Director informed the Student that the College offered an electric golf cart for use by students with disabilities, which operated Monday through Thursday from 7:30 a.m. to 12:30 p.m. and from 2:00 p.m. to 5:00 p.m. The cart was charging between 12:30 p.m. and 2:00 p.m. The Director informed the Student that the cart generally followed a regular route, but that if she called and asked for a ride, the driver would respond if available.
- On its web site, the OSD has a “Request for Reasonable Accommodation” Form that can be filled out by students, and a “Program Eligibility Verification” form that specifies what accommodations the College has authorized. The Program Eligibility Verification form also has a check box which confirms that the student has received a copy of the “Student Accommodation Dispute Procedure,” which informs students how to challenge the College’s decision not to approve an accommodation the student believes is necessary.
- The Director told OCR that he did not remember whether he gave the Student any paperwork to fill out that would have confirmed whether she qualified as a student with a disability or would have specified what accommodations the College had determined were appropriate. The OSD did not have any documentation about the Student’s interactions with the office.
- The Student used the golf cart provided by OSD to get to and from class on several occasions, but the cart was often not available when the Student needed it. For example, one of the Student’s classes ended at 1:15 p.m., when the cart was being charged, and another one of her classes ended at 7:00 p.m., when the cart was no longer running. In one email exchange with the Student’s instructor that was provided to OCR, the Student told the instructor that on May X, 2016 she missed class because she was not able to get from the parking lot to her classroom and she called for a ride for 45 minutes but no one answered because the OSD closed at 3:00. The Student told OCR that she dislocated her hip and twisted her other ankle during this time, which she told OCR was due to the problems she was having navigating on crutches.
- The Student called OSD on a number of occasions to complain that the golf cart was not available. The Director of OSD told OCR that he understood that the Student was having a hard time getting around on crutches but that he did not remember discussing any alternatives to the golf cart with the Student. The Director reported that he simply tried to make the golf cart available to her during the hours that it was operating. One of the Student’s instructors moved the Student into a different class in order to make her schedule a better fit with the golf cart’s availability, but the Student continued to repeatedly need transportation from the parking lot to her classes when the golf cart was not available.

Analysis

Under the requirements of Section 504 and Title II, a student with a disability is obligated to notify the college or university of the nature of the student's disability and the need for a modification, adjustment, aid or service. Once a college or university receives such notice, it has an obligation to engage the student in an interactive process concerning the student's disability and related needs. As part of this process, the college or university may request that the student provide documentation, such as medical, psychological or educational assessments, of the impairment and functional limitation.

In determining what modifications are appropriate for a student with a disability, the recipient should familiarize itself with the student's disability and documentation, explore potential modifications, and exercise professional judgment. Whether a recipient must make modifications to its academic requirements or provide auxiliary aids is generally determined on a case-by-case basis. Section 504 envisions a meaningful and informed process with respect to provision of accommodations, e.g., through an interactive and collaborative process between the school and the Student. If a school decides to deny a request for an accommodation, it should clearly communicate the reason for its decision to the student so that the student has a reasonable opportunity to respond and provide additional documentation or to appeal the decision.

OCR's investigation to date revealed that the Student told the College that she needed assistance to get from the parking lot to her classes, and the College told her of the availability of a golf cart during certain hours of the day. The College was not necessarily required under Section 504 or Title II to make the golf cart available at all times, but OCR's investigation to date revealed concerns that the College did not sufficiently engage the Student in an interactive process about what other modifications or accommodations might have been needed in order to ensure that she could participate in and obtain the benefits of the College's programs and services. For example, one possible accommodation could have been to change her class schedule further to ensure that it fit within the hours that the golf cart was operating. While the Student could have also proposed other accommodations, the Student's failure to provide a specific proposal does not obviate the College's need to effectively engage in the interactive process.

OCR therefore had concerns about whether the College sufficiently engaged in the interactive process to determine the extent of the Student's disability and what accommodations were appropriate.² In order to complete the investigation, OCR would need to interview each of the individuals in the Office for Students with Disabilities who

² The Director of the Office for Students with Disabilities told OCR that the OSD treated the Student as if she were a qualifying student with a disability, even though her impairment was temporary. Because the College observed the Student on crutches and was in the best position to make that determination when the Student presented herself, and because the College proceeded as if she was a qualified student with a disability, OCR assumed for the purpose of its analysis that the Student's temporary impairment qualified her as a student with a disability under Section 504 and Title II.

may have had contact with the Student. Prior to the conclusion of OCR's investigation into this allegation, however, the College expressed an interest in resolving this allegation. The Resolution Agreement in this case requires that the College issue written guidance and provide training for OSD staff about the required procedures regarding students requesting disability accommodations, including the requirement that staff engage in an interactive process to determine what accommodations are necessary.

Issue 2: *Whether the Business Education, Health and Sciences Education, and APL buildings are accessible to individuals with disabilities. Specifically, whether:*

- (a) the buildings had accessible parking during the last three weeks of the spring 2016 semester while College parking lots were under construction;*
- (b) a sand area near the entrance to the APL building is accessible;*
- (c) the APL building was accessible given the presence of double doors inside the building that did not open automatically; and*
- (d) the women's bathroom in the APL building was not accessible to individuals with disabilities because the door opened outward.*

Legal Standards

The regulations implementing Section 504 and Title II provide that no qualified person with a disability shall, because a recipient/public entity'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, service, or activity of the recipient, 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively.

The regulations contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "existing facilities" while the other covers "new construction" and "alterations." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

Existing Facilities

The Section 504 regulations, at 34 C.F.R. § 104.22, and the Title II regulations, at 28 C.F.R. § 35.150, apply to "existing facilities," and define them as any facility or part of a facility where construction was commenced prior to June 3, 1977 or January 26, 1992, respectively. The regulations provide that, with respect to existing facilities, the recipient shall operate its programs, services, 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 a recipient program, service, or activity offered within an existing facility, when viewed in its entirety, is

accessible to and usable by individuals with disabilities. The recipient may comply with the existing facility standard through the reassignment of programs, services, and activities to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, services, and activities, when viewed in their entirety, accessible to individuals with disabilities. In choosing among available methods for redressing program inaccessibility, the recipient must give priority to those methods that offer programs, services, and activities to individuals with disabilities in the most integrated setting appropriate as well as methods that entail achieving access independently and safely.

Under some circumstances, the concepts of program access and facilities access are related. This is because it may be necessary to remove an architectural barrier to create program access. A program offered exclusively in a particular building on a campus may not be accessible absent a ramp or accessible washroom to the particular building. Under such circumstances, in evaluating existing facilities, facility accessibility standards may be used to guide or inform an understanding of whether persons with disabilities face barriers to participating in the program, service, or activity provided in a particular facility. In reviewing program accessibility for an existing facility, the Uniform Federal Accessibility Guidelines (UFAS) may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service.

Pursuant to 28 U.S.C. 35.150(a)(3), a public entity is not required to take an action that it can demonstrate would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. In those circumstances where personnel of the public entity believe that the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, a public entity has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the head of a public entity or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, a public entity shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits or services provided by the public entity.

New Construction/Alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, and Title II regulations, at 28 C.F.R. § 35.151, also apply to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after June 3, 1977 or January 26, 1992, respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient/public entity 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 the recipient/public entity 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 regulations specify the standard to be used in determining the accessibility of new construction and alterations. The Section 504 regulations, at 34 C.F.R. § 104.23(c), delineate the American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physical Handicapped (ANSI 117.1 – 1961 (1971)) as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977 and before January 18, 1991. The provisions of UFAS set forth the designated standard for facilities constructed or altered on or after January 18, 1991. The Title II regulations (28 C.F.R. § 35.151(c)) delineate UFAS or ADAAG as a minimum standard for determining accessibility for facilities constructed or altered on or after January 26, 1992.

On September 15, 2010, the United States Department of Justice published new regulations implementing Title II and included specific accessibility standards as part of the regulations. These accessibility standards, the 2010 Standards for Accessible Design (2010 Standards), became the applicable construction standards for all new construction and alterations by public entities beginning on March 15, 2012, including new construction and alterations completed before March 15, 2012 that did not comply with ADAAG or UFAS. 28 C.F.R. § 35.151(c)(5).

The Title II and Section 504 regulations provide that recipients/public entities may depart from the particular technical and scoping requirements of these architectural standards if substantially equivalent or greater access and usability of the facility is provided. 34 C.F.R. § 104.23(c); 28 C.F.R. § 35.151(c). Deciding which of the available accessibility standards must be used is determined based on the date of commencement of physical construction. 28 C.F.R. § 35.151(c).

Maintenance of Operable Features

The Title II regulations, at 28 C.F.R. § 35.133, provide that a public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities by the ADA.

Findings of Fact

Issue 2(a): Accessible Parking during Construction

- During the spring 2016 semester, the Student had classes in the Business Education, Health and Sciences, and APL Buildings. The parking lots closest to those buildings are lots 9, 10, 11 and 12.

- Lots 9, 10, 11 and 12 have a total of 53 accessible parking spaces. Lot 9 has 11 accessible parking spaces, Lot 10 has 9 accessible parking spaces, Lot 11 has 8 accessible parking spaces, and Lot 12 has 25 accessible parking spaces.
- During May and June 2016, the College closed Parking Lot 9 and Parking Lot 12 for renovations. The College reported that each parking lot was closed at separate times for approximately one week, but that the accessible parking spaces in Lot 12 were not closed even when the rest of that lot was closed.
- After her injury, the Student obtained a disabled parking placard from the DMV that enabled her to park in accessible parking spaces, as well as in visitor and staff parking spaces.
- The Student told OCR that she had a very difficult time finding parking when the parking lots were closed. The Student told OCR that she was not aware that there were accessible parking spaces in Lot 10 or Lot 12. She told OCR that the accessible parking spaces in Lot 11 were always full, and that she believed the accessible parking spaces in Lot 9 were used by staff with disabilities who worked in the Office for Students with Disabilities, which was located near Lot 9.

Issue 2(b): Accessible Route to APL Building

- The APL building was constructed in 1995. There are five entrances to the APL building, and there is an accessible (concrete sidewalk) path of travel from the parking lot to each entrance.
- Outside the APL building, there is a small planter area with decomposed granite that some students cut across to get from one part of the parking lot to one entrance to the APL building. The Student told OCR that she wanted to use this route to get to the APL building or to walk through the APL building to get to her class in the Health and Sciences building. The Student said if she did not cut through the planter area she would have to walk through the “square,” a courtyard just outside the APL building.
- As an alternative to cutting through the planter area, students can walk along a sidewalk that leads to the same accessible entrance to the APL building. That sidewalk also leads to an accessible route to the Health and Sciences building. Based on OCR’s review of the map of the building and pictures provided by the College, the accessible route that the Student identified to the Health and Sciences building that goes through the courtyard is not significantly longer than the route that goes through the planter.

Issues 2(c) and 2(d): Interior Doors in APL Building and Door to First Floor Women's Restroom in APL Building

- There are two sets of double doors that lead into the lobby of the APL building from other parts of the APL building. Neither set of doors is automatic. Both sets of the interior double doors leading into the lobby are classified as fire doors.
- The door on the first floor women's restroom in the APL Building opens outward into the hallway. This door is also classified as a fire door.
- The local fire authority for the College is the Los Angeles County Fire Department. The fire authority requires that fire doors have a maximum of fifteen pounds of force pursuant to the California Building Code, and also requires that fire doors close and latch securely on their own from a fully open position, as described in Section 5.2.3.5.2 of the 2016 National Fire Protection Association (NFPA) code.
- OCR spoke with the College's locksmith, who is responsible for maintenance of the College's doors, including fire doors. He reported that he had personally reviewing the door settings and the three sets of doors at issue (the two sets of doors into the lobby and the restroom doors) were all set to the lowest possible level of force to enable the doors to close and latch securely from an open position consistent with the fire code. The opening force for the two sets of interior doors into the lobby was between 7 and 7.5 pounds. The opening force for the door to the women's restroom was six pounds.

Analysis & Conclusions of Law

Issue 2(a): Accessible Parking during Construction

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 are permissible under the regulations. Allowing obstructions or interruptions to persist beyond a reasonable period of time constitutes a violation of the regulation.

Here, the only accessible parking spaces that were closed were the parking spaces in Lot 9. The Student said she was aware of the accessible parking spaces in Lot 11 but that they were often full. However, during that time, there were also accessible parking spaces in Lots 10 and 12 that were directly adjacent to the lots she wanted to park in, which the Complainant was not aware of. OCR therefore found that the loss of access to the accessible spaces in lot 9 was a reasonable, temporary interruption in access that does not violate Title II or its regulations.

Issue 2(b): Accessible Route to APL Building

Because the APL building was constructed in 1995, the relevant standards for accessibility are the Uniform Federal Accessibility Standards (UFAS) and the 1991 ADA Accessibility Guidelines (1991 ADAAG).

Section 4.3.2 of the 1991 ADAAG requires that at least one accessible route must be provided from accessible parking spaces and accessible passenger loading zones to the accessible building entrance they serve. The accessible route must, to the maximum extent feasible, coincide with the route for the general public.

Here, there is an accessible route from the accessible parking spaces to each of the five accessible entrances to the APL building. The accessible route is the sidewalk, meaning that it does coincide with the main route for the general public. Depending on which accessible parking space a student parked in, it is possible that cutting through the decomposed granite area would be the shortest straight-line distance from the parking space to one of the doors to the APL building. However, the 1991 ADAAG does not require that the accessible route be the shortest straight-line distance from every accessible parking space to every door. Rather, it requires that there be an accessible route, and that the accessible route coincide with the route for the general public to the maximum extent feasible. OCR found that that requirement is satisfied here, where there are accessible sidewalks that run from the accessible parking spaces to each door, and that those routes are either the same distance or only slightly longer than the route through the decomposed granite area.

Issues 2(c) and 2(d): Interior Doors to Lobby and Restroom Doors in the APL Building

The Student told OCR that she had difficulty with the two sets of interior doors leading into the lobby of the APL building because they were manual doors instead of automatic doors and were therefore hard to open while holding her crutches. The applicable standards do not require that interior doors be automatic in order to be accessible. Rather, the 1991 ADAAG requires only that the doors meet the requirements of Section 4.13 of the standards regarding factors such as opening force, clear width, and maneuvering clearance.

The Student did not report any problems with the clear width or maneuvering clearance for the interior lobby doors. Rather, the Student said she had trouble actually pulling the doors open. The College told OCR that these double doors are fire doors. Section 4.13.11 of the 1991 ADAAG provides that the maximum force for pushing or pulling open an interior hinged door is normally five pounds, but for fire doors the maximum force allowed is equivalent to the "minimum opening force allowable by the appropriate administrative authority." Here, the opening force of the doors was set between 7 and 7.5 pounds. The local fire authority enforces a fifteen pound maximum force as required in the California Building Code, but does not require a minimum opening force. The fire authority does, however, require that the fire doors close and latch automatically on their own when closed from a fully open position, as required by

Section 5.2.3.5.2 of the National Fire Protection Association (NFPA) code. OCR spoke with the College's maintenance staff person responsible for maintenance of the doors, and he confirmed that the doors were set to the lowest possible level (between 7 and 7.5 pounds) that would allow the doors to close and latch securely. That is, if the doors are set at less than the current levels, they do not close and latch securely as required by the local fire authority.

The Student also told OCR that she was unable to open the door into the women's restroom in the APL building because it opened outward into the hallway and she had trouble pulling the door open while using crutches. The 1991 ADAAG standards do not require that interior doors open in a certain direction. The Student also told OCR that the doors were very heavy. The College reported that this door was also a fire door, and that the opening force of the door was six pounds. As noted above, the maximum opening force for fire doors is the "minimum opening force allowable by the appropriate administrative authority," and the local fire authority requires that fire doors be able to close and latch securely from a fully open position. As with the other interior doors, OCR confirmed that the door was set at the lowest possible level (six pounds) to allow the door to close and latch securely.

As such, OCR found that the preponderance of evidence was that the opening force of the doors was in compliance with Section 4.13.11 of the 1991 ADAAG, and thus that there was insufficient evidence that the College was violating Section 504 or Title II as to this issue.

Conclusion

Based on the commitments made in the enclosed resolution agreement as to Issue 1, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address OCR's compliance concerns discussed above. OCR will monitor the implementation of agreement until the College is in compliance with the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the College's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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 another complaint 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, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Blake Thompson, Civil Rights Attorney, at (415) 486-5630.

Sincerely,

/s/

Zachary Pelchat
Team Leader

Encl: Resolution Agreement