



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

January 31, 2020

VIA ELECTRONIC MAIL

Dr. Ronald Kraft
Superintendent/President
Napa Valley College District
XXXXXXXXXXXXXXXXXXXX

(In reply, please refer to case no. 09-16-2391.)

Dear Superintendent/President Kraft:

On August 26, 2016, the U.S. Department of Education, Office for Civil Rights (OCR), received a complaint against Napa Valley College (College) by a student (Student)¹. OCR understood the allegations to be that several buildings on the College District's main campus are not fully accessible to individuals with mobility disabilities. Specifically, OCR investigated the following allegations.

- 1) Bathroom doors cannot be opened without great difficulty in Catacula Hall, Little Theater, McPherson Administration Building, and McCarthy Library.
- 2) The café in McCarthy Library does not have an automatic door that opens onto the exterior patio. Also, the café does not have an automatic door that connects it to the interior of McCarthy Library.
- 3) The classrooms in Mallacomes Hall do not have automatic exterior doors.
- 4) Existing automatic door openers are inoperable at Catacula Hall, Little Theater, and McPherson Administration Building.
- 5) The bathrooms in Catacula Hall, Little Theater, McPherson Administration Building, and McCarthy Library are not accessible for individuals with mobility limitations. Additionally, these bathrooms do not have automatic door openers.

¹ OCR previously provided the College/District with the identity of the Student. We are withholding their name from this letter to protect their privacy.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

- 6) Existing automatic doors in the cafeteria are either inoperable or have door opener pads that are located so far away from the door that individuals with mobility limitations are effectively unable to enter the cafeteria before the door starts to close.
- 7) Elevator doors in Catacula Hall close too quickly for individuals with mobility limitations to safely enter and exit the elevator.

I. Background

Beginning in June 2016, Student began attending classes on the Napa campus. At that time, she was using a wheelchair for mobility. The original complaint was received on August XX, 2016. Student was asked by OCR to provide additional information to identify the particular issues and buildings where they occurred. Student provided the additional information on September XX, 2016. The College was sent a data response that it responded to a request for information concerning building dates of construction and alteration to the features that were the subject of the complaint. OCR conducted a site visit on January 17, 2019 and collected data in regard to the alleged inaccessible features of the identified buildings.

II. Issues Investigated

Legal Standards: Facility and Program Access

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 persons with disabilities, 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; 28 C.F.R. § 35.149. The regulations contain two standards for determining whether a recipient/public entity's programs, activities, and services are accessible to individuals with disabilities. One standard applies to "new construction" and "alterations" while the other applies to "existing facilities." The applicable standard of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New construction and alterations

The Section 504 regulations, at 34 C.F.R. § 104.23, apply to "new construction or alterations," defined as any facility or part of a facility where construction was commenced after June 3, 1977. For the purposes of Title II, "new construction or alterations" is defined as any construction of or alterations to a facility or a part of a facility on or after January 26, 1992. The regulations for each law 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 Section 504 regulations, at 34 C.F.R. § 104.23(c), specify the *American National Standards Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically 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. Facilities constructed or altered on or after January 18, 1991 are required to comply with the *Uniform Federal Accessibility Guidelines* (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6). Recipients may choose between applying the *2010 Standards for Accessible Design* (2010 Standards) (28 C.F.R. § 35.151 and 28 C.F.R. part 36, subpart D) or UFAS for any new construction or alteration commenced on or after March 15, 2012. 77 F.R. 14972, 14975 (Mar. 14, 2012).

With respect to Title II, public facilities constructed or altered on or after January 26, 1992 through September 14, 2010 are required to choose application of UFAS or the 1991 *ADA Standards for Accessible Design* (1991 Standards) (28 C.F.R. Part 36, App. A). Public facilities constructed or altered on after September 15, 2010 through March 14, 2012 are able to comply through the application of UFAS, the 1991 Standards, or the 2010 Standards. Effective March 15, 2012, new construction and alterations pursuant to Title II are required to comply with the 2010 Standards. New construction and alterations completed before March 15, 2012 that did not comply with the 1991 Standards or UFAS (i.e., noncompliant new construction and alterations) were also subject to the 2010 Standards. 28 C.F.R. § 35.151(c)(5).

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, also apply to “existing facilities.” Section 504 defines existing facilities as any facility or part of a facility where construction was commenced prior to June 3, 1977. Existing facilities for the purposes of Title II are any facility or part of a facility where construction was commenced prior to January 26, 1992. 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 (hereinafter “the program accessibility standard”).

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.

The concepts of program access and facilities access are related, because it may be necessary to remove an architectural barrier in order to create program access. For example, a program offered exclusively in a particular building on a campus may not be accessible and usable to individuals with disabilities absent the provision of physically accessible features. Under such circumstances, 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 subject to Section 504, UFAS or the 2010 Standards may be used as a guide to understanding whether individuals with disabilities can participate in or benefit from the program, activity, or service. The 2010 Standards may be used as a guide to understand whether individuals with disabilities can participate in or benefit from the program, activity, or service of a public entity subject to Title II. Specific details of the architectural standards are described below as needed.

Maintenance of Operable Features

The Title II regulations, as 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.

Notice & Signage

The Section 504 regulations, at 34 C.F.R. § 104.22(f), also require the recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of programs, services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II regulations, at 28 C.F.R. § 35.163(a), have a similar requirement for public entities. In addition, 28 C.F.R. section 35.163(b) requires a public entity to provide signage at all inaccessible entrances that direct users to accessible entrances or to a location at which they can obtain information about accessible facility entrances. The section also requires that the international symbol for accessibility be displayed at each accessible entrance to a facility.

Automated Doors

The 2010 Guidelines and Standards, “Common Questions” at page 14 states:

“Is automation of doors required?”

Automation of doors is not required by the Standards, but it is highly recommended for entrance doors where the opening force is significant. A maximum opening force is not specified for exterior hinged doors because of the closing force typically necessary for ensuring positive latch against wind loading, air pressure, and other conditions. This often results in opening forces well above the 5 lbf maximum. Difficulty opening exterior swing doors is a

common complaint. Automation offers the best solution. Otherwise, closers should be set with the minimum force practicable.”

Issue 1: Bathroom doors cannot be opened without great difficulty in Catacula Hall, Little Theater, McPherson Administration Building, and McCarthy Library.

Issue 5: The bathrooms in Catacula Hall, Little Theater, McPherson Administration Building, and McCarthy Library are not accessible for individuals with mobility limitations. Additionally, these bathrooms do not have automatic door openers.

Factual Findings

The College Manager of Facilities Services informed OCR that the College elected to apply the 1991 ADA Standards to the modifications made to existing buildings between 2003 and 2010.

OCR investigated whether the bathroom doors in Catacula Hall, Little Theater, McPherson Administration Building, and McCarthy Library require too much force for an individual with mobility impairments to be able to open. OCR also investigated whether the toilet rooms in these buildings are inaccessible because they do not have automated door openers.

Catacula Hall 800

Catacula Hall was built in 1978 and renovated with upgrades February 23, 2010. The College stated that portions of the building were modernized in 2010, including the restrooms in the building after DSA review. New doors and closures were installed at the restrooms to meet accessibility guidelines.

OCR found that the second floor (the entry level for pedestrian mall) Men’s toilet room door is not automatic but has 5-pound pull force (lpf). The Women’s toilet room door is not automatic and has a 10-12 lpf; exceeding the 2010 5 lpf standard. On the third floor, the Men’s toilet room door is not automatic and has a pull force of 10 lpf. The Women’s toilet room door is not automatic and has a 10-12 lpf. Both of those doors exceeded the 5 lpf 2010 standards.

Little Theatre 1200

The Little Theatre was built in 1970 and modernized in July of 2007. The District stated that this modernization included accessible restrooms and door actuators at the building entrance.

The second floor Men’s toilet room door is not automated but has a pull force of 5 lpf. The Women’s toilet room door is not automated but has a 5 lpf pull force. Both measurements meet the UFAS and 1991 standards.

McPherson Administration Building 1500

This building was built in 1964 and modernized in October of 2010. The District stated that this modernization included entrance door actuators as well as restroom modernization.

Here, the Men's toilet room door is not automated but has a pull force of 5 lpf. The Women's toilet room door is not automated but has a 5 lpf pull force. Both of these doors meet the 2010 standards.

However, the Men's room has a table just inside the door that substantially protrudes into the 60" maneuvering space for a wheelchair to turn on the push side of the door and to operate the door on the pull side.

McCarthy Library and Cafe 1700

The building was constructed following DSA review and completed in 2010.

The first floor Men's toilet room door is not automated and has a pull force of 10 lpf. A rectangular trash bin about 6 inches wide across the top opening and two feet long protrudes into the 60" maneuvering space for a wheelchair to turn on the push side of the door and operate the door on the pull side. It is not secured to the wall and, if it fell over, could block access for wheelchairs.

The second floor Men's toilet room door is not automated and has a pull force of 10-12 lpf. A rectangular trash bin about 6 inches wide across the top opening and two feet long protrudes into the 60" maneuvering space for a wheelchair to turn on the push side of the door and operate the door on the pull side. It is not secured to the wall and, if it fell over, could block access for wheelchairs.

Analysis and Conclusion

Catacula Hall, which was modernized in 2010, must meet the 2010 accessibility standard: the pull force to open the door cannot exceed 5lb. OCR found that only one of four entry doors to the toilet rooms in Catacula Hall currently meets the 2010 Standards. For this reason, OCR found the College was not in compliance with Section 504 and Title II with regard to the Catacula Hall entry doors to the toilet rooms.

The Little Theatre and the McPherson Administration Building are also required to have doors with a pull force to open the door that cannot exceed 5lb. The toilet room entry doors in the Little Theatre and the McPherson Administration Building meet the standards. For this reason, OCR found that the College was in compliance with Section 504 and Title II with regard to those toilet room entry doors.

The McCarthy Library has the same 5lpf standard. On both Men's toilet rooms, the pull force to open the entry doors exceeded the 5lpf 2010 Standards. For this reason, OCR found that the Men's toilet rooms are not compliant with Section 504 and Title II requirements.

In addition to the pull force issues, the table in the Men's toilet room in the McPherson Administration Building and the trash bins in the Men's toilet rooms in the McCarthy Library obstruct the doors and maneuvering space for wheelchairs and other mobility devices and as such do not comply with Section 504 and Title II with regard to the toilet room entry doors.

OCR found that all the interior doors do or can meet the 5lpf standard. The door closers can be adjusted, and the hinges oiled, or lighter doors installed to meet the 5lpf maximum. Neither the 1991 standards nor the 2010 standards require that interior doors be automated. If a particular student cannot operate the toilet room doors with 5 lpf, the College may take other steps to make the program accessible for the student such as an accessible toilet room in another building or a helper to open the door. Therefore, OCR does not find that the College is out of compliance due to the lack of automated doors.

Issue 2: The café in McCarthy Library does not have an automatic door that opens onto the exterior patio. Also, the café does not have an automatic door that connects it to the interior of McCarthy Library.

McCarthy Library and Cafe 1700

Construction on this facility was completed in 2010. OCR determined the push/pull force to open the manually operated exterior door between the Café and the patio was 10 lpf. The patio area is open to the elements and subject to possible wind pressure from a 180-degree angle.

The interior door between the Library and the Café is not automated. OCR measured the push/pull force for the door to be 10-15 lpf.

Analysis and Conclusion

The UFAS, the 1991 standard, and the 2010 Standard do not set a maximum pull force for a manual exterior door but recommends an automated door under these circumstances. For this reason, OCR determined the door between the outside patio and the café should be automated.

An automated door opener is not required for the interior door between the Café and the Library by the 2010 standards. However, the pull weight of the interior door between the Library and the Café exceeds the 2010 Standard and must be adjusted not to exceed 5lpf.

Issue 3: The classrooms in Mallacomes Hall do not have automatic exterior doors.

Mallacomes Hall 1400

This facility was built in 1964 and has had no alterations since that time. The District stated that the building has not been modernized with the exception of mechanical equipment. The door hardware was changed in 2003 including door closures.

OCR confirmed that all six rooms in the building have manually operated doors, and they are the only way to enter and leave the rooms from the outside. Four of the rooms were classrooms and two were computer labs. OCR was able to test one classroom door and it had a door handle that could be operated with a closed fist, the actuator was 37 inches above the ground and had a pull opening force of 5lfp.

In the interior of the room, a desk blocked wheelchair access and movable desks would need to be re-arranged to provide an accessible route into the room and an area cleared to accommodate space for a wheelchair in the classroom.

Analysis and Conclusion

OCR found insufficient evidence that the classroom doors in Mallacomes Hall (constructed in 1964 and with no subsequent alternations) fail to meet the standards required by UFAS. However, since the building was constructed in 1964, a “program access” standard would be applied for an individual with a mobility impairment who needs to access the classrooms in Mallacomes Hall. Several options that the College might consider could include: setting minimum opening/closing for manual exterior doors, the use of automated doors for some/all of the rooms, providing a helper to open and close the door and offering students with disabilities the option to move any class to an alternative accessible location.

Issue 4: Existing automatic door openers are inoperable at Cataula Hall, Little Theater, and McPherson Administration Building.

Factual Findings

Catacula Hall 800

The automated entrance door on the southwest corner is operable and has a 13 second interval to enter the building when the door is open between ninety degrees and seventy degrees.

Little Theatre 1200

The automated entrance door on the Southwest corner on the pedestrian concourse level of the building is currently operable. The control button is four feet from the automated door; has a 10 second interval to enter the building when the door is open between ninety degrees and seventy degrees.

McPherson Administration Building 1500

The automated entrance doors at the front and rear of the building are operable and each has a 20 second interval to enter the building when the door is open between ninety degrees and seventy degrees.

Analysis and Conclusion

OCR found that all three automated entrance doors were operational at the time of the site inspection. Therefore, OCR found insufficient evidence of failure to comply with Section 504, Title II of the ADA with regard to the automated entry doors on Catacula Hall, Little Theatre, and McPherson Administration Center.

Issue 6: Existing automatic doors in the cafeteria are either inoperable or have door opener pads that are located so far away from the door that individuals with mobility limitations are effectively unable to enter the cafeteria before the door starts to close.

Student Activity Center (cafeteria) 900

The District stated that the former dining hall and adjacent restrooms were modernized in 2003 following DSA review.

There are two operating buttons for the automated doors at this entrance. One is about three inches square in size and located further than 8 feet from the automated door. The second button is about six inches square in size and located about 8 feet from the automated door. The smaller and more distant button was not operational at the time of OCR's inspection. The larger and closer button took several attempts, but eventually operated, although the cover plate was loose and the symbols and writing on the button were worn off and might be hard for a vision-impaired person to locate. Once activated, the operator had 5 seconds to reach the door while it was opening and an additional 14 seconds to go through the door while it was open from 90 degrees to 12 degrees.

Analysis and Conclusion

Although the door is currently functional and will stay open a sufficient amount of time to meet 1991 Standards, the operation plate must be repaired or replaced and the signage on the button restored.

Issue 7: Elevator doors in Catacula Hall close too quickly for individuals with mobility limitations to safely enter and exit the elevator.

Factual Findings

OCR found that the elevator door stays open 9-10 seconds, once fully opened. The 1991 standard requires a minimum of 5 seconds lapse from notification of arrival to fully open, and that the door stays open a minimum of three seconds once fully open. Elevator doors in the building exceed ADAAG time periods for door closure from the time arrival is announced until door closure.

Classrooms and other second floor features can be entered by accessible routes leading from the pedestrian concourse, without the use of the elevator. The single elevator provides access to the first and third floors and is reserved for freight and persons with disabilities.

Analysis and Conclusion

OCR did not find that these elevator doors closed too quickly. The timing of the elevator doors complies with the 1991 and 2010 standards. Therefore, there is insufficient evidence to find a violation of Section 504 or Title II in regard to this issue.

Resolution

As noted above, OCR's investigation resulted in a "mixed determination" under OCR's Case Processing Manual (CPM) Section 303(c) in that OCR found violations in regard to some allegations (CPM Section 303(b) determinations) and insufficient evidence of non-compliance

with regard to other allegations (CPM Section 303(a) determinations). Upon being advised of this finding, the College voluntarily agreed to enter into a resolution agreement to resolve the matter as to potential violations. A copy of the agreement is enclosed with this letter.

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 Student may have the right to file a private suit in federal court whether or not OCR finds a violation.

The complainant has a right to appeal OCR's determination regarding the issues above in which we made a compliance finding (CPM Section 303(a)), within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

Federal regulations prohibit the Recipient from retaliating against the Student or from intimidating, threatening, coercing, or harassing the Student or anyone else because they filed a complaint with OCR or because the Student or anyone else takes part in the complaint resolution process.

Under the Freedom of Information Act, it may be necessary to release this document and related 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please call our office at 415-486-5555.

Sincerely,

/s/

Zachary Pelchat
Team Leader

cc: Heather R. Coffman Esq.
LCW Liebert, Cassidy, Whitmore