



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

October 18, 2021

VIA ELECTRONIC MAIL ONLY

Lisa Kloppenberg
Acting President
Santa Clara University
president@scu.edu

(In reply, please refer to OCR Docket Number 09-20-2272.)

Dear President Kloppenberg:

The U.S. Department of Education, Office for Civil Rights (OCR), has reached a resolution of the above-referenced complaint received by OCR on February 25, 2020, against Santa Clara University (University). The complaint alleged discrimination based on disability. Specifically, OCR investigated the following issue: whether the University's Jesuit School of Theology (School) fails to provide accessible or usable housing to students with disabilities.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability under any program or activity receiving Federal financial assistance. The University receives funds from the Department and is therefore subject to Section 504 and its implementing regulations.

To investigate this complaint, OCR gathered evidence by reviewing documents provided by the University and the Complainant. Based on the facts gathered to date, OCR identified the following compliance concern: the University's School may fail to provide accessible or usable housing to students with disabilities. The legal standards, facts gathered, and the reasons for our determinations are summarized below.

Legal Standard

The regulations implementing Section 504 provide that no qualified person with a disability shall, because a University'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.

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

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of compliance depends upon the date of construction and/or the date of any alterations to the facility.

New Construction/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. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient 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 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).

Existing Facilities

The Section 504 regulations, at 34 C.F.R. § 104.22 apply to “existing facilities,” and define them as any facility or part of a facility where construction was commenced prior to June 3, 1977. The regulations provide that, with respect to existing facilities, the University 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 program, service, or activity offered within an existing facility, when viewed in its entirety, is accessible to and usable by individuals with disabilities. The University 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 University 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. Specific details of the architectural standards are described below as needed.

Notice & Signage

The Section 504 regulations, at 34 C.F.R. § 104.22(f), also require the University 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.

Factual Findings

The University's School is located in Berkeley, California. Student housing for the School consists of three residences, referred herein as Buildings A through C.

The Complainant alleged that the School's student housing facilities are not accessible to students with disabilities. Specifically, the Complainant alleged that Building B had a damaged handrail to its entrance and was not equipped with a ramp or elevator. The Complainant provided photos of a stairway entrance to the building with a damaged handrail. The photos show broken or cracked concrete near the base parts of the handrail, caution tape along the handrail, and wooden planks reinforcing the handrail. Also, according to the Complainant, during the fall 2019 semester, a student who used a wheelchair due to an injury could not access Building B. The Complainant also alleged that Building C was not equipped with a ramp or elevator and provided photos of a stairway to an entrance to the building.

According to the University, all three residences were built in 1967 or earlier, and there are no units designated for students with disabilities. The residences' floor plans show that the buildings' entrances/exits have stairs. It appears that Building B may be accessed from the basement level through a security gate without stairs, then using an elevator to get to the first floor and above. The University provided documentation indicating that in October 2019, the elevator at Building B did not work, and as of June 12, 2020, it had not been repaired. It also

appears that Building C may be accessed from the basement-level garage using an elevator to get to the first floor and above. The University provided documentation indicating that in October 2019, this building also could not be accessed by elevator.

According to the University, it received one complaint concerning the accessibility of the School's residences during the 2019-20 school year. In October 2019, a student who resided at Building B incurred a leg injury and, as a result, they had to use crutches and/or an electric wheelchair or scooter for mobility. Documents provided by the University indicate that the student notified their Program Director of their injury and related needs, and internal communications between the Program Director, the School's Assistant Dean of Students, the School's Assistant Director of Housing and Building Operations, the School's Assistant Director of Buildings and Grounds, the University's Director of the Office of Accessible Education, and the University's Associate Vice President of Auxiliary Services, among others, followed.

According to University-provided documents, the student was unable to access their first-floor unit because the building had stairs at the entrance, the handrail to the stairs had caution tape and could not bear weight, and there was no ramp. Also, the building's elevator did not work. In response, the student inquired into the possibility of a temporary ramp. According to one University employee, at that time, none of the residences were accessible by ramp or elevator; all required at least one flight of stairs to access even the first floor. Relatedly, another University employee stated that they did not believe a ramp could be provided at an acceptable angle at the student's residence. The student also requested modifications to the shower in their unit, including a shower bench, a handheld showerhead, and non-slip adhesive for the shower floor. Later, the student also inquired into where they could charge their medical scooter and if in the garage, whether the timer to the garage door could be adjusted to provide the student additional time to enter and exit using crutches.

The University determined that it was responsible for providing accommodations to the student. It considered relocating the student to another residence that was accessible, but determined that the School had no accessible housing, so explored other solutions. On or about October 30, 2019, the University implemented a "temporary fix" to the damaged handrail located at Building B. The "temporary fix" was described as a repair to a handrail that was not secure because it had deteriorated concrete at its base. The University also modified the student's shower for greater accessibility, and it provided the student with a means for charging their medical scooter, though it was unable to change the timer to the garage door to facilitate the student's entry and exit without another person present. The University considered installing a ramp to the student's residence, but it ultimately did not do so. On October 31, 2019, the University requested that the student provide an email stating essentially that the student opted to remain in their housing unit knowing that it was not accessible by elevator or ramp. The University did not provide OCR with such an email from the student.

OCR also obtained from the University a list of alterations to the residences, which included the following: to Building A, updated fire alarm system (2013), roof restoration and boiler and

heating system replacement (2017), carpet replacement (2018), and window replacement and security cameras (2019); to Building B, upgraded fire alarm systems (2013), roof restoration and carpet replacement (2017), installed security gate (2018), kitchen counters and floors replaced (2016-2019), and security cameras (2019); and to Building C, upgraded fire alarm system (2013), balcony rebuilt and installed security gate (2018), and security lighting and cameras (2019). The list did not include repairs to stairway handrails or elevators or the addition of ramps for increased accessibility.

Analysis

Based on the evidence gathered to date, OCR has a concern that the University's School may not provide usable or accessible housing to students with disabilities.

The School's residences were built before 1977; therefore, they are existing facilities under Section 504. In addition, OCR found no evidence of alterations that would trigger an obligation on the part of the University to make the School's residences fully accessible as "new construction." For existing facilities, the standard under Section 504 is program access. Accordingly, OCR applied the program access standard. Under this standard, the University must operate its programs, services, and activities so that, when viewed in their entirety, they are readily accessible to and usable by persons with disabilities. The University 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. The Section 504 regulations, at 34 CFR § 104.22, also require the University 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.

Here, the evidence shows that in October 2019, a student who used crutches or a scooter for mobility could not access their first-floor unit at Building B by ramp or elevator. The University did not provide the student with housing that was accessible by ramp or elevator, because the School did not have such housing. The School's residences all have stairs to their entryways. At least one broken elevator and an unacceptable angle for a ramp also factored into the University's determination. In the end, the University implemented a "temporary fix" to better secure a damaged handrail to the stairway to the entrance of the student's residence, but this did not address the underlying concern that all student housing required stairs to access the buildings. The University also requested that the student memorialize their decision to remain in campus housing knowing it could not be accessed by ramp or elevator. These facts raise a concern for OCR that the University's School may fail to provide accessible or usable housing to individuals with mobility impairments, and the University's School may not have an effective process in place for ensuring that individuals with mobility impairments can access its residences or obtain accessible housing through it.

Summary and Resolution

Prior to OCR concluding its investigation, and to address the issues alleged in the complaint, the University, without admitting to any violation of law, entered into the enclosed Resolution Agreement, which is aligned with the complaint allegations and the information obtained by OCR during its investigation. Per the Resolution Agreement, the University will develop a protocol for students at the School and other consortium member schools to request accessible housing available through the University, and for prospective students of the School and other consortium member schools to learn about accessible housing options available to them through the University. If needed, the University also will develop a protocol for notifying visitors with disabilities how they may access any programs, activities, or services held or made available at the three University-owned facilities used to house the School's students in Berkeley, California. A copy of the Resolution Agreement is enclosed with this letter.

Conclusion

This concludes OCR's investigation of the complaint.

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. When fully implemented, the resolution agreement is intended to address the complaint allegations. OCR will monitor the implementation of the resolution agreement until the University is in compliance with the terms of the resolution agreement. Upon completion of the obligations under the resolution agreement, OCR will close the case.

OCR's determination should not be interpreted to address the University'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 University may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual 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, 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.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Monique Raco Fuentes (monique.racofuentes@ed.gov).

Sincerely,

/s/

James Wood
Team Leader

Enclosure

cc: Bridget K. Colbert, Interim General Counsel, via e-mail