



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

April 4, 2023

VIA ELECTRONIC MAIL

Ming Tung Lee, Ph.D.
President
Sonoma State University
1801 East Cotati Ave.
Rohnert Park, CA 94928

By email only to: president@sonoma.edu

Re: Sonoma State University
OCR Case No. 09-23-2070

Dear President Lee:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Sonoma State University (University). The complainant (the Student) alleged that the University discriminated against him on the basis of disability.¹ Specifically, OCR investigated the following issues:

1. Whether the University discriminated against the Student on the basis of disability by not maintaining an accessible travel path from Parking Lot E to the Wine Spectator Learning Center.
2. Whether the University discriminated against the Student on the basis of disability by failing to provide alternative accommodations necessary for the Student to access his classes after he suffered a shoulder injury that limited his ability to use a wheelchair to get to his classes in August-September 2022.

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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a public entity and a recipient of Federal financial assistance from the Department, the University is subject to Section 504 and Title II.

¹ OCR previously provided the University with the identity of the Student. We are withholding his name from this letter to protect his 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.

To investigate this complaint, OCR interviewed the Student and reviewed documents he provided. OCR also visited the University campus and observed its pathways. Prior to OCR completing its investigation and making a compliance determination, and prior to the University providing its data response, the University expressed interest in voluntary resolution pursuant to Section 302 of OCR's Case Processing Manual (CPM),² and OCR determined it was appropriate. The issues investigated, facts gathered, legal standards, and the reasons for OCR's determinations are summarized below.

Legal Issue 1: Whether the University discriminated against the Student on the basis of disability by not maintaining an accessible travel path from Parking Lot E to the Wine Spectator Learning Center.

Facts

The following facts are relevant to OCR's analysis:

The Student stated that he transferred to the University in Fall 2019, and that he has a disability that requires him to use a wheelchair 100% of the time. According to the Student, the University's access paths are made of asphalt and are "worn down", including that the paths are uneven with breaks in them and loose rocks. The Student told OCR that the condition of the paths causes him to operate his wheelchair slowly, which can add up to 15 minutes of extra travel time from the accessible parking spots in Parking Lot E to his classes in the Wine Spectator Learning Center (Wine Spectator Center). Additionally, the Student stated that loose rocks have damaged the power train of his electric wheelchair and made it inoperative at least six times during the past three years, including most recently in August 2022. The Student stated that the Veterans Administration (VA) fixes his wheelchair power train at no cost, but that while it is doing so, he must operate his wheelchair manually, which causes him pain in his shoulders because the wheelchair is very heavy. The Student stated that the paths between Salazar Hall and the Wine Spectator Center are in especially poor condition.

The Student stated that in early September 2022, he complained about the condition of the paths between Salazar Hall and the Wine Spectator Center to the Dean of Student Services, who responded by setting up an in-person meeting for the Student, the Vice President for Student Affairs, and the Director of Facilities and Maintenance. The Student stated that during the meeting, he showed them the access problems with the paths, and they responded that there was no money for repairs. The Student further stated that a week or two later he complained to the University President about the condition of the paths, and the President responded that the Student should try to use a different path. The Student told OCR that the alternate path the President suggested was also inaccessible due to its poor condition. The Student stated that he then complained to the University Chancellor's Office, but that it referred him back to the University.

In February 2022, the University informed OCR that it had repaved paths to ensure that the Student had an accessible path to his Spring 2023 semester classes, none of which were in the Wine Spectator Center. OCR also confirmed and collected photo evidence that the paths to the Student's current classes are accessible, while the paths to the Wine Spectator Center continue to

² OCR Case Processing Manual (July 2022) <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>

have loose rocks and breaks in the asphalt. OCR twice asked the Student to confirm accessibility of the paved paths he currently uses; he responded that improvements were only made after he filed an OCR complaint. Additionally, the University stated that it would pave additional paths during the summer of 2023, including the paths between Salazar Hall and the Wine Spectator Center, which were the subject of this complaint. The University provided OCR with a map identifying the paths it had paved and would pave during the summer 2023.

Legal Standard

The regulations implementing Section 504 and Title II 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 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.

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. For the purposes of Title II, "new construction or alterations" is defined as any construction 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, 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 University’s 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 understand 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.

Analysis and Resolution

The University did not inform OCR of the date that the paths between Salazar Hall and the Wine Spectator Center were constructed. However, regardless of which architectural or legal standard is applied, both section 4.5.1 of the 1991 Standards and section 302.1 of the 2010 Standards

require that ground surfaces along accessible routes be stable, firm, and slip resistant. An advisory note to Section 302.1 of the 2010 Standards further explains that, “a firm surface resists deformation by either indentations or particles moving on its surface.”³

OCR confirmed the Student’s concern about surface accessibility of the paths in this area of campus, based on OCR’s observation of the paths and photographic evidence. The Student had indicated that the condition of the paths had damaged his wheelchair on multiple occasions.

Before the completion of OCR’s investigation, the University expressed interest in voluntary resolution and informed OCR that it had recently paved paths to ensure access to the Student’s current (Spring 2023) classes, as well as provided OCR with a map indicating which additional paths would be paved during summer 2022, including the paths located in the area between Salazar Hall and the Wine Spectator Center.

Allegation 2: Whether the University discriminated against the Student on the basis of disability by failing to provide alternative accommodations necessary for the Student to access his classes after he suffered a shoulder injury that limited his ability to use a wheelchair to get to his classes in August-September 2022.

Facts

The Student told OCR that during the Fall 2022 semester, he had a class in the Wine Spectator Center. On August XX, 2022, the Student emailed a Specialist at the University’s office of Disability Services for Students (DSS) and informed her that he had just had shoulder surgery and that his wheelchair power train was being repaired and that he could not operate it other than in manual mode. He asked the Specialist whether DSS had “the capabilities to transport [him] from [his] car to both [his] classes on Monday and one class on Tuesday?” On September X, 2022, the Specialist responded that, “the campus doesn’t have any transportation services at all” and it would be “most efficient” if the Student could find someone who could push him in his wheelchair. The Specialist also offered the Student the opportunity to speak on the phone and “brainstorm.” The Student told OCR that he did not have someone to push his wheelchair, and so he wheeled himself manually and used his arm crutches which was painful. The University told OCR that DSS was aware that the Student had another family member attending the University. The University also stated that the Specialist no longer worked for the University.

Legal Standard

The Section 504 regulations, at 34 C.F.R. § 104.4(a) and (b), state that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. Under 34 C.F.R. § 104.4(b)(1)(iii), a recipient may not, on the basis of disability, provide a qualified disabled individual with an aid, benefit, or service that is 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.

³ <https://www.ada.gov/law-and-regs/design-standards/2010-stds/#302-floor-or-ground-surfaces>

Appendix A to the Section 504 regulations states that the term “equally effective” is intended to encompass the concept of equivalent, as opposed to identical, services and to acknowledge the fact that in order to meet the individual needs of individuals with disabilities to the same extent that the corresponding needs of nondisabled persons are met, adjustments to the regular program may sometimes be necessary. A recipient must therefore make reasonable modifications to policies, practices, and procedures and provide aids, supports, and services necessary to ensure that an individual with a disability has an equal opportunity to participate in its programs and activities, unless it can demonstrate that doing so would be a fundamental alteration or would constitute an undue burden.

Similarly, under the Title II regulations at 28 C.F.R. § 35.130(b)(7)(i), a public postsecondary educational institution is required to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the institution can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. This provision applies to all areas of the institution’s programs and activities including those unrelated to academics or academic standards such as library programs, financial aid, registration, and counseling. Whether or not a particular modification or service would fundamentally alter the program is determined on a case-by-case basis. While cost may be considered, the fact that providing a service to an individual with a disability would result in additional cost does not of itself constitute an undue burden on the program.

Pursuant to 28 C.F.R. § 35.164, the decision that modifications would result in a fundamental alteration must be made by the head of the institution or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. In the event that an institution demonstrates that making modifications would result in a fundamental alteration of a service, program, or activity, it must take other actions that would not impose such an alteration to ensure that, to the maximum extent possible, individuals with disabilities receive the benefits or services.

Analysis and Resolution

OCR is concerned that the University may have been out of compliance with the Section 504 and Title II regulations with respect to this issue when the DSS Specialist informed the Student on September X, 2022 that the University did not have any transportation services to help the Student get to class while his wheelchair drive chain was being repaired, and directed him to find someone to push his wheelchair as an accommodation. Because the University expressed interest in voluntary resolution pursuant to CPM Section 302, however, OCR did not complete its investigation and did not gather additional information from the University responsive to this allegation.

Overall Conclusion

This concludes the investigation of this complaint.

To address the complaint allegations and OCR’s concerns identified in the investigation, the University, without admitting to any violation of law, entered into the enclosed resolution agreement. Under the terms of the agreement, the University will repave and/or repair certain access paths on campus to ensure that each path has a surface that is firm, stable, and slip-

resistant and the University will provide documentation confirming that this work has been completed. Further, the University committed to distributing a guidance memo to all DSS staff members, and other staff members who assist students with disabilities, explaining the interactive process used to assist students with mobility-related disabilities, as well as emphasize that the University must work with students to provide reasonable accommodations, including assistance with transportation if such an accommodation is necessary to ensure equal access to programs and services.

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 Student 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 and the statutes and regulations at issue in the case.

OCR's determination in this matter 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 Student 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, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

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, personally identifiable 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 OCR attorney Matthew Wood at Matthew.Wood@ed.gov.

Sincerely,

/s/

Ava DeAlmeida Law
Team Leader