



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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June 16, 2015

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Dr. Bob Kustra
President
Boise State University
1910 University Drive
Boise, Idaho 83725

Re: Boise State University
OCR Reference No. 10152013

Dear Dr. Kustra:

The U.S. Department of Education, Office for Civil Rights (OCR) is discontinuing its investigation of the referenced discrimination complaint against Boise State University based on the enclosed Voluntary Resolution Agreement (agreement).

The complaint alleged that the university is discriminating against individuals with disabilities because certain physical facilities and elements at the Technology and Entrepreneurial Center (TECenter) are inaccessible. Specifically, the areas and elements at the TECenter that raised accessibility concerns included the parking lot; curb ramp and exterior accessible route to the entrance; interior accessible route; interior doors and hardware; access to controls and control panels; exterior doors; interior signage; men's and women's restrooms; men's and women's shower rooms; assembly areas; and general building elements related to the placement of trash cans, chairs, and seasonal decorations.

OCR accepted this complaint for resolution under the authority of section 504 of the Rehabilitation Act of 1973, title II of the Americans with Disabilities of 1990, and their respective implementing regulations. Section 504 and Title II prohibit disability discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education and by public entities, respectively. The university receives federal financial assistance from the Department and is a public entity, and is therefore required to comply with these federal civil rights laws.

Under the Section 504 and Title II regulations, the university is prohibited from excluding, denying, or discriminating against people with disabilities because its facilities are unusable by or inaccessible to them. See 34 CFR 104.21; 28 CFR 35.149. With respect to existing facilities, the university is required to operate each program or activity housed in the existing facility so that the program or activity, when viewed in its entirety, is readily accessible to

and usable by people with disabilities. See 34 CFR 104.22(a); 28 CFR 35.150(a). Under the program accessibility standard, the university is not required to make all existing facilities or every part of its existing facilities accessible, as long as the program or activity provided at each facility is readily accessible to persons with disabilities. See 34 CFR 104.22(a); 28 CFR 35.150(a)(1). The university is permitted to provide program accessibility in existing facilities through such means as a redesign or acquisition of equipment, reassignment of services to accessible buildings, delivery of services at alternate accessible sites, alteration of existing facilities or construction of new facilities, or any other method that results in making its services, programs, or activities readily accessible to and usable by people with disabilities. See 34 CFR 104.22(b); 28 CFR 35.150(b)(1).

With respect to altered or newly constructed facilities, each facility or part of a facility that has been altered or newly constructed is required to be designed, constructed, and maintained in operable working condition, in compliance with the applicable accessibility design standard. See 34 CFR 104.23(a) and (b); 28 CFR 35.133(a), and 35.151(a) and (b). The specific accessibility standard that applies to an altered or newly constructed facility depends upon the date that the alteration or construction commenced. See 34 CFR 104.23(c); 28 CFR 35.151(c). Whether a facility is considered an existing facility or a newly constructed/altered facility depends on the date the construction/ alteration commenced on the facility, and the applicable accessible standard will, therefore, depend on the construction/alteration date.

Additionally, Section 504 and Title II require the university to ensure that interested persons can obtain information from the university about the existence and location of its accessible services, activities, and facilities, and designate at least one employee who will coordinate and carry out the university's efforts to comply with the Section 504 and Title II regulations, including the investigation of any disability discrimination complaints made under the university's grievance procedures. See 34 CFR 104.7 and 104.22(f); 28 CFR 35.107 and 35.163(a). The university must also take continuing steps to provide notice of the university's designated employee, the availability of information about the university's accessible services, activities, and facilities, and that the university does not discriminate on the basis of disability. See 34 CFR 104.8; 28 CFR 35.106.

In accordance with section 302 of OCR's Case Processing Manual (CPM), a complaint may be resolved when the recipient expresses an interest in resolving the complaint before the conclusion of an investigation. When this occurs, the provisions of any agreement to resolve the complaint must be aligned with the complaint allegations and any information obtained during the discontinued investigation and must be consistent with applicable regulations.

Upon notifying the university of this complaint, an associate general counsel of the university provided OCR with information regarding a draft assessment of the TECenter conducted by the university's Architectural and Engineering Services department during the summer of 2014. The university also requested to resolve the complaint pursuant to section 302 of the CPM. Based on OCR's review of the university's assessment and the information provided by the complainant regarding the TECenter facilities, OCR determined that there

were accessibility concerns at the TECenter that were appropriate for resolution by a section 302 agreement.

Subsequent resolution discussions between OCR and the university resulted in the university signing the enclosed agreement, which, when fully implemented, will resolve the issues raised by the complaint. OCR has determined that the provisions of the agreement are aligned with the complaint allegations and the information obtained thus far during OCR's investigation, and are consistent with the applicable Section 504 and Title II regulations.

The actions that the university will take under the agreement include: determining the specific accessibility standards that apply to the TECenter; conducting an evaluation of the facility and elements at the TECenter to assess whether it complies with the applicable accessibility standards; addressing any elements which are determined to be inaccessible; reviewing and revising the university's accessibility policies and procedures; designating an employee who will be responsible for providing accessibility information and addressing accessibility complaints for the university; and providing notice and training to university employees.

OCR will monitor the implementation of the agreement and will close the complaint when it has determined the terms of the agreement have been satisfied. Please be advised that the university may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in OCR's complaint resolution process. If this occurs, the complainant may file a complaint with OCR alleging such retaliatory treatment.

This letter sets forth OCR's determinations with respect to this OCR complaint. 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 complainant may have the right to file suit in federal court whether or not OCR finds a violation.

Thank you for the cooperation that you extended to OCR in resolving this complaint. If you have any questions about this letter, you may contact Christina "Tina" Meade, attorney, at (206) 607-1604 or at christina.meade@ed.gov.

Sincerely,

/x/

Kelli Lydon Medak
Supervisory Attorney

Enclosures: Voluntary Resolution Agreement