



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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July 31, 2020

Dr. Les P. Cook
Chancellor
Montana Technological University
1300 West Park Street
Butte, Montana

Re: Montana Technological University
OCR Reference No. 10202105

Dear Dr. Cook:

This letter is to inform you of the disposition of the above-referenced complaint filed against the Montana Technological University (university) with the U.S. Department of Education (Department), Office for Civil Rights (OCR). The complaint alleged that the university is discriminating against individuals with disabilities because its facilities are inaccessible. Specifically, the complaint alleged:

1. The parking facility adjacent to the library (library parking facility) and the tiered parking facility at the southeast corner of campus (tiered parking facility) lack sufficient accessible parking spaces and the available accessible parking spaces are too steep.
2. During the winter of the 2019-2020 school year, the accessible parking spaces located in the tiered parking facility, the library parking facility, and the parking facility between the chancellor's residence and the Mining and Geology Building (chancellor's residence parking facility) were inaccessible because the university failed to clear ice and snow from the accessible parking spaces and plowed snow into the accessible parking spaces in the library parking facility.
3. During the winter of the 2019-2020 school year, the university failed to maintain accessible routes on campus by removing ice and snow.

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

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As explained below, prior to completion of OCR’s investigation, the university expressed an interest in voluntarily resolving the complaint and signed the enclosed Voluntary Resolution Agreement (agreement) to address the complaint allegations.

OCR investigated this case under the authority of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), and their implementing regulations. Section 504 prohibits discrimination on the basis of disability in programs and activities receiving federal financial assistance. Title II prohibits disability discrimination by public entities. The university receives federal financial assistance from the Department and is a public entity. Therefore, the university is required to comply with these federal civil rights laws.

The regulation implementing Section 504 at 34 C.F.R. § 104.21 provides that no qualified person with a disability shall, because a recipient'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. The regulation implementing Title II at 28 C.F.R. § 35.149 provides that no qualified individual with a disability shall, because a public entity’s facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

The Section 504 and Title II regulations contain physical accessibility requirements which distinguish between existing facilities and new construction. Under Section 504, facilities constructed on or before June 3, 1977 are existing facilities, while new construction refers to facilities constructed after that date. See 34 C.F.R. §104.22– 104.23. Title II provides that existing facilities are those constructed on or before January 26, 1992, and facilities constructed after that date are considered new construction. See 28 C.F.R. §35.150– 35.151.

For existing facilities, Section 504 and Title II require that an institution operate its program so that, when viewed in its entirety, it is readily accessible to persons with disabilities (program accessibility standard). Under this standard, an institution is not required to make all existing facilities or every part of its facilities accessible, as long as the program or activity provided at each facility is readily accessible to persons with disabilities. See 34 C.F.R. §104.22 and 28 C.F.R. §35.150. An institution can provide program accessibility for existing facilities through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, or any other methods that result in making its programs or activities accessible to persons with disabilities.

The accessibility standard used for new construction depends on the date construction commenced. Construction commenced after June 3, 1977, through January 19, 1991, must comply with the American National Standards Institute standards (ANSI), ANSI A117.1-1961

(R1971). For construction commenced after January 19, 1991, through January 26, 1992, the Uniform Federal Accessibility Standards (UFAS) applies. Construction commenced after January 26, 1992 and before March 15, 2012, must comply with either the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) or UFAS; an institution may choose between ADAAG and UFAS for each facility, but must use the same standard for the entire facility. Construction commenced on or after March 15, 2012, must comply with the 2010 Americans with Disabilities Act Standards for Accessible Design (2010 Standards). New alterations to a facility are analyzed similarly to new construction.

Based on OCR's investigation to date OCR has a concern that certain elements of the university's facilities identified in the allegations may be inaccessible to or unusable by individuals with disabilities. OCR reviewed information provided by the complainant regarding the identified facilities, such as descriptions and specifications of identified parking facilities, and a photo and description of conditions of identified parking facilities and a description of accessible routes during periods of inclement weather, which do not appear to meet the 2010 Standards. The university discussed potential methods by which the university intended to ensure compliance with applicable accessibility standards.

In accordance with Section 302 of the OCR *Case Processing Manual*, a complaint may be resolved at any time when, before the conclusion of an investigation, the entity expresses an interest in resolving the complaint allegations and OCR determines that it is appropriate to resolve the issues under investigation with an agreement during the course of an investigation. In this case, the university requested to resolve the complaint prior to the conclusion of OCR's investigation. In light of the university's willingness to comprehensively address the concerns identified by OCR without further investigation, OCR determined that entering into a voluntary resolution agreement was appropriate. Subsequent discussions with the university resulted in the university signing the enclosed agreement.

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.

This concludes OCR's investigation of the complaint. The complainant may have the right to file a private suit in federal court regardless of OCR's determination.

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 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, we

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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.

OCR will monitor the implementation of the agreement and will close the complaint when OCR determines that the terms of the agreement have been satisfied. The first report under the agreement is due by August 29, 2020.

Thank you for the cooperation that you and your staff extended to OCR staff in resolving this complaint. If you have any questions, please feel free to contact Charlotte Cunningham, Attorney, by telephone at (206) 607-1610, or by e-mail at charlotte.cunningham@ed.gov.

Sincerely,

Barbara Wery
Team Leader

Enclosure: Voluntary Resolution Agreement