



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1475

REGION XI  
NORTH CAROLINA  
SOUTH CAROLINA  
VIRGINIA  
WASHINGTON, DC

August 18, 2017

*Via U.S. Mail and email (presidentsoffice@hamptonu.edu)*

Dr. William R. Harvey  
President  
Hampton University  
100 E. Queen Street  
Hampton, VA 23668

Re: OCR Complaint No. 11-16-2247  
Letter of Findings

Dear Dr. Harvey:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on XXXX against Hampton University (the University).<sup>1</sup> The Complainant alleged that the University discriminated against her on the basis of disability. Specifically, the complaint alleged that the University is not physically accessible to individuals with mobility impairments, including the Complainant, in that:

1. Faculty offices in Martin Luther King, Jr. Hall are located on an inaccessible floor, which precluded the Complainant from attending office hours and created difficulty in obtaining required information to register for classes;
2. The automatic door(s) at the only accessible entrance of New Cafeteria were non-operational during the XXXX academic year; and
3. The entrances to residence halls, including Dubois Hall, Twitchell Hall, and Gladys Hope Franklin White Hall, are inaccessible, particularly because exterior ramps to the buildings are closed by alarmed gates.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department, OCR has jurisdiction over it pursuant to Section 504.

In reaching a determination, OCR reviewed documents provided by the Complainant and the University; interviewed the Complainant and University faculty and staff; and conducted a site visit to the University from November 9 through November 10, 2016.

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<sup>1</sup> The Complainant filed the complaint initially with the U.S. Department of Justice (DOJ) on XXXX. DOJ referred the case to OCR on XXXX.

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

After carefully considering all of the information obtained during the investigation, OCR determined that there was insufficient evidence to substantiate Allegation 1. However, with respect to Allegation 2 and Allegation 3, OCR identified compliance concerns regarding the lack of an accessible entrance at two residence halls (New Dining Hall and Dubois Hall), and the slope of interior and exterior ramps at another (Twitchell Hall), which the University agreed to resolve through the enclosed Resolution Agreement pursuant to Section 303(b) of OCR's *Case Processing Manual*, signed on August 16, 2017. OCR's findings and conclusions are discussed below.

### **Background**

The Complainant enrolled as a student at the University in XXXX. The Complainant has limited mobility XXXX. In addition, the Complainant registered with the Office of Compliance and Disability Services (OCDS) in XXXX, and OCDS approved her to receive academic adjustments in the form of permission to arrive late to her classes. The University provided OCR with information that it also relocated several of the Complainant's classes to accessible locations during the course of her enrollment. Additionally, the University indicated that the Office of Housing Services accommodated the Complainant's disability with respect to on-campus housing by providing her with ground level dormitory rooms when she resided in a dormitory that did not have an elevator, and by building a ramp so she could access the shower in the dorms' bathrooms.

The University's campus is fairly compact, containing residence halls and administrative buildings on one end of campus and academic buildings on the other with a centralized dining hall.

### **Legal Standards**

The regulation implementing Section 504, at 34 C.F.R. § 104.4, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under the University's programs or activities on the basis of disability.

When investigating an allegation of different treatment, OCR first determines whether there is sufficient evidence to establish an initial, or *prima facie*, case of discrimination. Specifically, OCR determines whether the recipient treated the complainant less favorably than similarly situated individuals without disabilities. If so, OCR then determines whether the recipient had a legitimate, nondiscriminatory reason for the different treatment. Finally, OCR determines whether the reason given by the recipient is a pretext, or excuse, for unlawful discrimination.

Further, the regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a recipient's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

Section 504 contains two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under Section 504, existing facilities are those for which construction began prior to June 4, 1977. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 standards.

For existing facilities, the regulation implementing Section 504, at 34 C.F.R. § 104.22, requires a recipient to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the regulation implementing Section 504, at 34 C.F.R. § 104.23(a), requires that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the regulation implementing Section 504, at 34 C.F.R. § 104.23(b), requires that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of Section 504 also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, Title II provides that universities had a choice of complying with either UFAS, Americans with Disabilities Act Accessibility Guidelines (ADAAG), or the 2010 ADA Standards for Accessible Design (2010 Standards). While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, Appendices B and D.

## **Analysis**

### **Allegation 1**

The Complainant alleged that faculty offices in Martin Luther King, Jr. Hall (MLK Hall) are located on an inaccessible floor, which precluded her from (a) attending office hours and (b) created difficulty for her in obtaining required information to register for classes.<sup>2</sup> Specifically, the Complainant reported that faculty required her to report to the second floor (Floor 2) of MLK Hall to receive course/academic advising and a PIN number for class registration. The Complainant stated that she informed University faculty of her inability to access the Floor 2, but no faculty members responded to her concerns. Consequently, the Complainant asserted that she did not have the same opportunity as non-disabled students to access professors for course and career advising.

The University provided information indicating that MLK Hall is a two-story building constructed in 1966, which has not undergone further renovation or alternation. Faculty offices for the Psychology Department are located on Floor 2, while the first floor (Floor 1) houses classrooms. MLK Hall shares an atrium with Ethel Buckman Hall and is accessed through a centralized automated exterior door.

Because OCR did not readily identify any renovations or alterations to MLK Hall during its on-site visit on XXXX, OCR determined that MLK Hall constitutes an “existing facility” pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.22. Under the existing facilities standard, a recipient is required to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. Therefore, regarding this complaint, the University does not need to make every part of a facility accessible to individuals with disabilities. Rather, the University may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities.

#### **(a) Office Hours**

With respect to the portion of the Complainant’s allegation regarding her inability to access faculty for office hours, OCR asked the Complainant to identify particular University faculty that she wanted to visit or from whom she sought an accommodation or alternate means to attend office hours at MLK Hall during the XXXX academic year.<sup>3</sup> The Complainant reported that she asked for an accommodation from one professor in the XXXX Department (the XXXX).<sup>4</sup> The

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<sup>2</sup> The Complainant noted that MLK Hall lacks an elevator to access Floor 2. OCR notes that under the applicable standard, an elevator in an existing facility is not required provided that the recipient’s programs, activities, and services are effective in ensuring overall access to persons with disabilities.

<sup>3</sup> Because OCR generally will only review allegations that are filed within 180 days of the last act of discrimination, OCR limited its investigation to the XXXX academic year.

<sup>4</sup> In the Complainant’s response to OCR, she also identified another XXXX Department professor and the XXXX and XXXX, who were reportedly involved in an unrelated request to pursue retroactive withdrawals from courses. However, the Complainant did not report to OCR that she requested an accommodation or alternate means to access the identified faculty and staff.

Complainant asserted that, although she advised the XXXX of her inability to access Floor 2 of MLK Hall and asked for an accommodation, she nevertheless “had to see [the XXXX] in her office upstairs.” Following this occurrence, the Complainant acknowledged that she made no further arrangements to access faculty for office hours. Instead, she either climbed the stairs using her XXXX and the staircase rail or asked a friend for assistance in reaching Floor 2.

OCR interviewed the XXXX during the course of its investigation. The XXXX stated she taught the Complainant in a XXXX course during the XXXX semester of the XXXX academic year, and not during the XXXX academic year.<sup>5</sup> The course met twice weekly on Floor 1 of MLK Hall, and office hours were generally held on Floor 2. During that time, the XXXX asserted that the Complainant did not appear for office hours, nor did she request an accommodation or alternate means to meet the XXXX in lieu of appearing for office hours. The XXXX recalled one incident in which the Complainant expressed difficulty accessing Floor 2 for office hours. In response to the Complainant’s expressed concern, the XXXX stated that she volunteered to provide alternative meeting arrangements and offered to meet the Complainant on Floor 1 of MLK Hall. Instead, the XXXX told OCR that the Complainant declined her offer and elected to come upstairs to Floor 2. The XXXX further clarified that the incident had, in fact, occurred in XXXX, and not during the XXXX academic year. To support her statement, the XXXX provided a copy of an email exchange with the Complainant dated XXXX. OCR reviewed the email exchange and determined that it corroborated the XXXX statement that after the Complainant raised accessibility concerns, she offered to provide alternative arrangements to ensure that her office hours for course advising were readily accessible to the Complainant. Since XXXX, the XXXX stated she has not maintained contact with the Complainant or received any further accommodation requests from the Complainant.

Moreover, the XXXX and the XXXX (the Interim Chair), whom OCR also interviewed, stated that professors are readily available to answer students’ questions immediately prior to and following class. Indeed, the Interim Chair reported that students primarily access faculty before or after classroom instruction in lieu of attending office hours. The XXXX also recalled that the Complainant remained after class to ask questions on occasion. Further, the XXXX and Interim Chair cited that faculty routinely provides alternate arrangements for students with limited mobility. For instance, the XXXX indicated that she had recently met with a student using XXXX immediately after class on Floor 1 in lieu of the student attending office hours on Floor 2. Such accommodations, according to the XXXX and Interim Chair, are readily made to ensure program access.

*(b) Class Registration*

With respect to the portion of the Complainant’s allegation pertaining to her ability to obtain required information to register for classes, the Interim Chair reported that students are required to obtain a PIN each semester for class registration. Generally, students receive a PIN after

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<sup>5</sup> OCR determined that this incident was untimely according to OCR’s case processing procedures. Nevertheless, OCR continued to investigate this incident for the purposes of obtaining additional information regarding the University’s practices with respect to providing program access to students with disabilities.

meeting with academic advisors for course advisement, which occurs on Floor 2 of MLK Hall. The Complainant asserted that she experienced difficulty in accessing Floor 2 and obtaining a PIN from her Academic Advisor. OCR asked the Complainant whether she requested an alternative arrangement to obtain a PIN and she responded, “No.”

The Interim Chair informed OCR that if the Complainant had raised her accessibility concern with the Department or OCDS, the University would have made an accommodation for the Complainant.<sup>6</sup> The Interim Chair reported that the XXXX was unaware of any accessibility concerns related to the Complainant obtaining a PIN. The Interim Chair added that the XXXX has had prior instances where students expressed difficulty in receiving required information for class registration. In those instances, the Interim Chair reported that academic advisors made necessary alternative arrangements to ensure that students obtained a PIN for class registration.

Finally, the Director of OCDS (the Director) told OCR that her office had not received any complaints from the Complainant regarding accessibility concerns at MLK Hall. The Director further explained that the University maintains a nondiscrimination policy to ensure access to all University programs and activities for students with disabilities. Students, such as the Complainant, are made aware of the University’s policy at the time of their registration with OCDS and through the University’s website. OCR reviewed and confirmed that the University’s policy is readily accessible on the OCDS webpage. Moreover, the Director explained her practice of conducting a walkthrough each semester of the class schedule and facilities for students with mobility-related disabilities to ensure adequate accessibility. The Director stated that she performed a walkthrough of the Complainant’s schedule for the XXXX semester. She stated that as a result of the walkthrough, the University relocated the Complainant’s XXXX course, which was assigned to the second floor of another building, to an accessible location. She recounted that at the time, the Complainant did not raise any accessibility concerns about MLK Hall.

OCR notes that at the post-secondary level, students are responsible for advising recipients of the need for accommodations/academic adjustments or auxiliary aids due to disability. Students are also responsible for knowing and following the policies and procedures established by the recipient to ensure access to programs and activities.<sup>7</sup>

Based on the foregoing, OCR has determined that there was insufficient evidence to substantiate the Complainant’s allegation that the University discriminated against her on the basis of her disability, with respect to her ability to access Floor 2 of MLK Hall, as alleged. Specifically, the Complainant did not provide and OCR did not find any evidence to support that the Complainant notified University faculty and staff during the XXXX academic year that she could not access

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<sup>6</sup> The Interim Chair also serves as an academic advisor for the XXXX.

<sup>7</sup> At the post-secondary level, recipients may establish reasonable requirements and procedures for students to provide documentation of their disability and request academic adjustments and auxiliary aids and services. Students are responsible for obtaining disability documentation and for knowing and following the procedures established by the recipient. Once the student has provided adequate notice and documentation of his/her disability and the need for modifications due to the disability, the recipient must provide the student with appropriate academic adjustments and auxiliary aids and services that are necessary to afford the student an equal opportunity to participate in the recipient’s program.

XXXX faculty, or that she had difficulty with registration/obtaining a PIN number, on Floor 2 of MLK Hall. OCR determined that the Complainant failed to provide timely information to suggest that she sought an accommodation to attend office hours during the XXXX academic year, and the Complainant acknowledged that she did not request an accommodation to obtain a PIN from her academic advisor.

Notwithstanding the Complainant's failure to request any accommodation to access Floor 2 of MLK Hall, OCR also determined that there was insufficient evidence to suggest that Floor 2 of MLK Hall is not readily accessible to students with disabilities, and specifically students with mobility impairments, under the program access standard. Witness statements and documentary evidence established the University's intent to provide accommodations and alternate arrangements to ensure that students with mobility impairments are afforded comparable access to the programs and activities occurring on Floor 2 of MLK Hall.

Based on the foregoing, OCR has determined that there was insufficient evidence to support Allegation 1, as the Complainant alleged. Accordingly, OCR will take no further action regarding Allegation 1.

#### Allegation 2

The Complainant alleged that the University failed to maintain the accessible entrances of New Dining Hall in proper working order. Specifically, the Complainant asserted that the automatic doors of the accessible entrances to the New Dining Hall functioned properly for several months after it first opened in XXXX, but the doors have malfunctioned since then. The Complainant explained that a friend would typically open the door for her because the doors were heavy; however, as of the XXXX academic year, this friend graduated from the University, so she had particular difficulty in accessing New Dining Hall during her XXXX year at the University.

The University provided OCR with documentation indicating that New Dining Hall was constructed in 2012, and it is the only full dining hall at the University.<sup>8</sup> It has a semi-circular, concave shape with entrances off a central plaza. Students access the dining hall from the plaza, up approximately six steps, and through several sets of doors at the center of the building.<sup>9</sup> The two accessible entrances, which both have an automated door, are located at either end of the semi-circle, also facing the plaza. Because of the timeframe within which New Dining Hall was constructed in 2012, OCR determined that it constitutes "new construction." Therefore, the accessibility standards applicable to New Dining Hall at the time of its construction were the 2010 Standards. OCR notes, however, that automated exterior doors are not required under the 2010 Standards. Despite this, if a recipient installs automated exterior doors, it must maintain the doors to ensure continued program access under 34 C.F.R. 104.22.

Email documentation provided by the University indicates that on XXXX, the Complainant complained to the University that the automated doors that served as the accessible entrances to

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<sup>8</sup> New Dining Hall is the main dining hall for students; however, there are other eateries located in the Student Center at which students are able to use their meal plan.

<sup>9</sup> Ramps to reach the building are located at either side, adjacent to the building and the plaza. They are not subject to the allegations of this complaint.

New Dining Hall were not functioning, and had not been “for some time now.”<sup>10</sup> Although the Complainant did not specify, nor did the University ask, how long the doors had been inoperable, the University acknowledged it received the Complainant’s report, and upon responding, confirmed that the doors were not functioning. As a result of the Complainant’s complaint, the University repaired the doors and provided to OCR a copy of an email that it sent to the Complainant confirming the repair was made on XXXX. The University delivered meals to the Complainant for the duration of the repair.<sup>11</sup> The Complainant acknowledged to OCR that the doors worked for a while between XXXX and sometime during the XXXX semester; however, when the doors malfunctioned again for the second time on an unspecified date in XXXX, she did not report her concerns to the University.

The University provided information to OCR indicating that after it received notice from OCR of this complaint, it checked the operability of the New Dining Hall doors and found that they did not operate. After its investigation, the University learned that while the doors functioned mechanically, the custodial staff had been improperly locking the doors and putting them into manual mode so they could not be opened from the exterior. The University provided documentation to OCR to show that the issue was corrected on XXXX, and also provided information to OCR to show that it trained custodial staff how to properly lock the doors on XXXX. When OCR visited the University on XXXX, OCR found that the doors functioned properly.

Based on the foregoing, OCR determined that there was sufficient evidence to substantiate that the Complainant was unable to access New Dining Hall between the period of XXXX and XXXX, in violation of Section 504. As a result, OCR determined that the Complainant is entitled to individual relief during this specified timeframe. However, beyond XXXX, OCR determined that no further prospective individual relief is available for the Complainant because the Complainant could not provide dates on which the doors malfunctioned after that date and sometime during the XXXX semester; and she could not quantify or substantiate any harm suffered during the second occurrence in the XXXX semester.

OCR further determined that during the course of OCR’s investigation, the University resolved the violation through implementing changes to the automatic doors to New Dining Hall. The University acknowledged the problems with access on two occasions and took steps to address them on both occasions after being notified, including through training University personnel. However, OCR cautions the University that it must regularly maintain the building’s entrances so that they remain readily accessible to individuals with disabilities and conform to the standards referenced in the 2010 Standards.

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<sup>10</sup> The XXXX semester commenced on XXXX. The Complainant informed OCR that she relied on friends bringing meals to her in her dorm room or did not eat. She did not specify how often she did not eat a meal when the doors were not functioning.

<sup>11</sup> According to the Director, during a XXXX telephone call, the Complainant’s XXXX requested reimbursement of the Complainant’s meal plan for the XXXX period in which she was unable to access New Dining Hall. Due to the nature of the request, the Director told OCR that she referred the Complainant’s XXXX to Student Accounts. However, the Director stated that she was unaware of the final outcome of the reimbursement request.



Accordingly, OCR resolved the portion of Allegation 2 pertaining to the Complainant through the Resolution Agreement signed by the University on August 16, 2017, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

### Allegation 3

The Complainant initially alleged that several of the University's residence halls ((a) Dubois, (b) Twitchell, and (c) White) were inaccessible because exterior ramps were emergency exits. Specifically, the Complainant told OCR that there were alarms on the ramps, and they were locked from the outside. During the course of OCR's investigation, the Complainant clarified that the ramps about which she had concerns were not blocked by gates, as OCR initially had understood, but that the doors adjacent to them were alarmed and locked, preventing use. The Complainant additionally clarified that this concern was specific to the only entrance of Dubois Hall that was accessible by ramp. With respect to Twitchell Hall, the Complainant also clarified that it contained an interior ramp that was too steep for her to navigate, causing her to fall. She stated that she complained of this to the University's former director of OCDS, but nothing was done. Finally, the Complainant clarified that the exterior door of White Hall was too heavy for her to open.

#### (a) Dubois Hall

As stated above, the Complainant alleged that the only entrance of Dubois Hall that could be accessed by ramp was inaccessible because the door adjacent to the ramp was alarmed and locked as an emergency exit, thus preventing use.

The University provided records and architectural drawings showing that Dubois Hall was built in 1970. Because OCR did not readily identify any renovations or alterations to Dubois Hall during its on-site visit on November 9 and 10, 2016, OCR determined that Dubois Hall constitutes an "existing facility" pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.22. Under the existing facilities standard, a recipient is required to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. Therefore, regarding this complaint, the University does not need to make every part of a facility accessible to individuals with disabilities. Rather, the University may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities, and services accessible to persons with disabilities.

Dubois Hall is a square, seven-story, high-rise building that has a single-story wing on the northeast side that contains common area rooms and the honors college offices. The main entrance to the building is reachable by approximately five steps. According to the University's Director of the Physical Plant and the Director of OCDS, the main doors, located on the northwest side of the building, remain unlocked during daytime hours and are visible to a staffed front-desk. The accessible entrance is a double-leaf door located on the northeast side of the building through the common area (the Side Entrance). The Side Entrance is not immediately in

the sightline of the staff at the front desk. The Side Entrance is reached by an exterior, permanent concrete ramp, which OCR confirmed was accessible.

The Complainant lived in Dubois Hall for XXXX academic years, XXXX. The Complainant complained to OCR that the Side Entrance was actually an emergency exit that was alarmed and locked from the exterior, precluding use. She further stated that signs posted on the doors read “Fire Exit Only.” She told OCR that when the Side Entrance doors opened, an alarm sounded, which resident assistants (RAs) on duty at the front desk had to disable manually. Instead, she said that she had to enter and exit through the main entrance of the building using her XXXX although she would have preferred to use her XXXX to access it. She said that other students assisted her in climbing the steps to the main entrance, and on some occasions, she asked another student to XXXX to the front door.

OCR visited the site and observed that the Side Entrance is a manual open, double-leaf door. During OCR’s on-site visit, OCR noted that the doors were unlocked from the exterior. OCR confirmed that each time the doors open a fire alarm sounds. Staff escorting OCR around campus, as well as the OCDS Director, stated that the alarm is to notify staff at the front desk that someone was entering the doors, as the doors are not directly in the sight line of the person monitoring the building at the front desk. OCR tested the doors approximately six times, and each time the alarm sounded. Further, on each occasion, the alarm had to be turned off manually by custodial staff at the direction of the Director of the Physical Plant.<sup>12</sup>

Although OCR observed that the Side Entrance was unlocked and usable, other information provided by the Complainant and two students who had served as RAs in Dubois Hall during the XXXX academic year indicated the contrary. OCR separately interviewed two students who had been RAs in Dubois Hall during the XXXX academic year.<sup>13</sup> The RAs indicated that they were intimately familiar with the layout of Dubois Hall. Each RA stated that all students were expected to use the main entrance of the dorm. They said the four other entrance doors, including the Side Entrance, were emergency exits, marked as such, and were locked from the exterior; therefore, although students could use the doors to exit the building in case of emergency, they could not enter the building through these doors. They further stated that when the doors opened, an alarm would sound and confirmed that the RA on duty at the desk would disarm the alarm. The RAs further confirmed that the Side Entrance located near the ramp was among the emergency exit doors and that it was locked from the exterior, signed as an emergency exit, and alarmed. Moreover, they stated that residents knew the only door to use was the main entrance and that the other doors were not for convenience but for emergencies. They told OCR that on some occasions, individuals, such as cleaning staff using a cart or vending machine delivery persons, would signal to the RA at the desk the need to enter using the

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<sup>12</sup> Further, OCR noted that when testing the doors, which enter directly into a common area or lounge, a group of approximately six individuals, who appeared to be students and were using the lounge to study, looked up from their work and first appeared surprised and then irritated by the repeated alarms each time the doors opened. The response of the students studying suggested the doors are not regularly used, and they are unaccustomed to hearing the alarm. Similarly, the front-desk staff person appeared unsure how to respond to the alarm, and the Director of the Physical Plant, who was escorting OCR, had to tell custodial staff present in the building to turn off the alarm manually.

<sup>13</sup> The University provided to OCR contact information for the two RAs.

Side Entrance, the RA would push open the door for the individual, and then would disarm the alarm when the door was shut again.

Both RAs also stated that they were aware of one student with a mobility impairment who resided in the building during the XXXX academic year. One RA recalled, and the other RA confirmed, that the student used XXXX to enter and exit the building; that other students assisted the student in entering and exiting the building using the front steps; and that another student XXXX the student to the main entrance on some occasions. The other RA further noted that the student struggled with the doors at the main entrance and that she sometimes would open the doors for the student when she worked at the front desk. Based on the information provided by the Complainant and the RAs, OCR determined that this student appeared to be the Complainant.

Additionally, during OCR's on-site visit, OCR asked a student leaving the Dubois Hall about the doors and alarm. He told OCR that he had never seen anyone use the Side Entrance because the main entrance was the only door students were to use. He said he thought an alarm would sound each time the doors opened, although he was unsure if the doors were regularly locked because he had never used them.

OCR also noted that the exterior entrances at each of the other three corners of the square building are also alarmed and have signs taped to the doors that contain messages such as, "Emergency Exit," "Do Not Use," and "Alarm Will Sound," which corroborates what the two RAs and the Complainant told OCR. Although OCR did not observe similar signs on the fourth entrance, which is the Side Entrance to the single story wing of the building, we did note tape marks on the doors, suggesting that some sort of sign had been removed.

Based on the information obtained from the University, the RAs, the Complainant, and during the course of OCR's on-site visit, OCR has determined that the Side Entrance doors constitute an emergency exit; and evidence indicates that the Side Entrance was unusable both because it was locked from the exterior and alarmed during the relevant time period. Because the presence of the door alarm and locks effectively denied program access under the applicable accessibility standard, OCR further determined that the Side Entrance was not readily accessible; and therefore did not constitute an accessible entrance. Moreover, OCR determined that Dubois Hall did not otherwise have an accessible entrance, including the main entrance which required navigation of multiple steps. Therefore, OCR concludes that Dubois Hall did not have an accessible entrance in violation of the regulation implementing Section 504, at 34 C.F.R. 104.22, requiring that buildings be readily accessible to students with disabilities.

In addition, as a result of the alarmed Side Entrance, OCR determined that the University violated the regulation implementing Section 504, at 34 C.F.R. 104.43, by treating the Complainant differently from non-disabled students. OCR finds that students who entered and exited the building via the main entrance did not encounter alarms at any time, while a student with a disability who needed to use the Side Entrance would encounter a blaring alarm, announcing their entrance or departure, assuming the Side Entrance was unlocked as the University asserted. While students without disabilities could have used the Side Entrance in addition to the main entrance, the Complainant and University RAs stated that no one used it because students were not allowed to use the Side Entrance and it was locked. OCR determined

that the University treated the Complainant less favorably than non-disabled peers when an alarm sounded each time the Side Entrance was used, thus announcing the Complainant's presence to others in the vicinity.

OCR further determined that the University offered a legitimate non-discriminatory reason for the University's action; namely, that the Side Entrance needed to be alarmed to ensure the security of the building. The University administrator and Director of Disability Services who accompanied OCR during the site visit stated that the purpose of the alarm was to notify desk staff that someone had entered the Side Entrance because the Side Entrance was not in the direct sightline of the front desk. However, OCR concludes that the University's proffered reason was pretext for discrimination. Specifically, University personnel told OCR that when the main entrance doors were locked at night, students seeking admittance swiped an identification card that allowed him or her admittance to the building, which was corroborated by the RAs. The University offered no reason that the same type of procedure could not be used for the Side Entrance. Further, OCR established that this was an emergency exit based on the statements from the University RAs and, therefore, concludes that the University's stated reason served as pretext for discrimination.

In summary, OCR determined that Dubois Hall did not have an accessible entrance in violation of the regulation implementing Section 504, at 34 C.F.R. 104.22, that buildings be readily accessible to students with disabilities; and, the University violated the regulation implementing Section 504, at 34 C.F.R. 104.43, by treating the Complainant differently from non-disabled students.

Accordingly, OCR resolved the portion of Allegation 3 pertaining to Dubois Hall through the Resolution Agreement signed by the University on August 16, 2017, pursuant to Section 303(b) of OCR's *Case Processing Manual*.

*(b) Twitchell Hall*

With respect to Twitchell Hall, the Complainant alleged that it contained an interior ramp that was too steep for her to navigate, causing her to fall. She stated that she complained to the University's former director of OCDS, but the University did not respond.

Twitchell Hall, which is a freshman women's dorm, was built in 1962. The Complainant resided in this building during the 2011-2012 academic year. The University has designated the main entrance of the building as the accessible entrance. OCR noted that the threshold to the building is approximately seven inches above the exterior pavement, and to account for this, the University placed a wooden ramp at the entrance of the building. The exterior ramp has a rise of approximately seven inches and a run of four feet, and it has a beveled edge of one inch. OCR did not observe railings on either side of the exterior ramp.

Inside the entrance of the building is a large single-story lobby and lounge. A central corridor beyond the main entrance leads up four steps to a perpendicular corridor containing dorm rooms for the residents. Although the building contains an elevator to the upper floors, the elevator is reachable only after traversing the four steps. To accommodate the steps, the University

installed a wooden interior ramp. The interior ramp has a rise of two feet and a run of approximately 13 feet. The interior ramp is built against the wall that contains the residents' mailboxes. The interior ramp has a handrail on one side but not on the side abutting the wall.

The Complainant told OCR that the interior ramp was steep and that she had once fallen from it. She said that when she moved into the building, the University had placed wooden planks to serve the purpose of the ramps; however, after she fell, the University constructed the present wooden ramps, which were also too steep. The Director of the Physical Plant informed OCR that the ramps were installed approximately XXXX years ago, in or around XXXX.

The 1962 date of construction of Twitchell Hall, initially rendered it an existing facility under 34 C.F.R. 104.22, requiring that the University ensure that it is readily accessible to students with disabilities. However, because the University also acknowledged that it altered Twitchell Hall by installing ramps in or around 2011, it constitutes an altered facility that is subject to the accessibility guidelines that were relevant at the time they were installed approximately five years ago.<sup>14</sup> The new construction provisions of Section 504 also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. During 2011, the 2010 Standards, UFAS, and ADAAG guided accessibility.<sup>15</sup> While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, Appendices B and D.

Under all three standards, the least possible slope shall be used for any ramp, and the maximum slope of a ramp in new construction shall be 1:12, or 8.33%. In existing facilities, where space is limited, interior and exterior ramps may have slopes between 1:10 and 1:12 when the maximum rise is 6 inches, and between 1:8 and 1:10 when the maximum rise is 3 inches. All three standards require handrails on both sides of a ramp if the ramp has a rise greater than six inches and, for UFAS and ADAAG, a horizontal projection of more than 72 inches.

OCR found that both the interior and exterior ramps exceeded the slope requirements under the 2010 Standards, UFAS, and ADAAG and, therefore, violate Section 504. OCR measured the slope of the exterior ramp in two locations at 11.1% and 12.0%, which exceeds the slope requirements under all three standards for both ramps in new construction and ramps in existing facilities. Likewise, OCR measured the slope of the interior ramp in four places at intervals of approximately three feet. The slope of the interior ramp ranged from 11.5% to 12.9% in two

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<sup>14</sup> Under UFAS, temporary facilities are not of permanent construction but extensively used or essential for public use for a given (short) period of time. As applied to elements, temporary means installed for less than six months. OCR determined that the interior and exterior ramps at Twitchell Hall are not temporary in nature because they have been used on an ongoing basis, rather than for a finite period, for five years.

<sup>15</sup> Under Title II, public post-secondary educational institutions had a choice of complying with either UFAS, ADAAG, or the 2010 Standards for facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012. As a private institution, the University is not subject to Title II; however, the Department published in the Federal Register a Notice of Interpretation of Section 504 in light of revisions to Title II, which stated that Section 504 permits recipients to use ADAAG as an acceptable alternative accessibility standard for new construction and alterations that commenced before March 15, 2012.

places. Similar to the exterior ramp, these measurements exceed the requirements of all three standards for ramps in new construction and ramps in existing facilities.

Additionally, the interior ramp does not have handrails on both sides of the ramp as is required by the 2010 Standards and by UFAS and ADAAG for ramps with run longer than 72 inches. Similarly, the exterior ramp does not have handrails on both sides of the ramp. While the exterior ramp is not required to have handrails under UFAS or ADAAG because its current horizontal projection is 48 inches, OCR notes that handrails on both sides of the exterior ramp are required under the 2010 Standards. The beveled edges (>1”) of both the interior and exterior ramps also fail to meet all three standards for edges of ramps as well.

OCR concludes that the slope of the interior and exterior ramps, the lack of handrails on both sides of the interior ramp, and the one-inch beveled edges of the interior and exterior ramps do not meet accessibility requirements described in the 2010 Standards, UFAS, and ADAAG in violation of Section 504.

Accordingly, OCR resolved the portion of Allegation 3 pertaining to Twitchell Hall through the Resolution Agreement signed by the University on August 16, 2017, pursuant to Section 303(b) of OCR’s *Case Processing Manual*.

(c) White Hall

Finally, the Complainant alleged that the entrance doors of White Hall were too heavy for her to use, and that the building was therefore inaccessible. The Complainant stated that she lived in the building during the XXXX academic year; however, she did not provide OCR with any information specific to the XXXX academic year.

The University informed OCR that White Hall was constructed in 2002, and it indicated that no further renovations or alterations were done to the building. Therefore, OCR determined that White Hall constitutes a newly constructed facility, pursuant to the regulation implementing Section 504, at 34 C.F.R. § 104.23(a). The regulation implementing Section 504, at 34 C.F.R. § 104.23(a), requires that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the regulation implementing Section 504, at 34 C.F.R. § 104.23(b), requires that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of Section 504 also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. Facilities constructed or altered after January 17, 1991, but prior to September 15, 2010, must meet the requirements of UFAS.<sup>16</sup> UFAS does not include any requirements for door opening force for exterior hinged doors. Therefore, OCR reviewed whether the building offered program accessibility in accordance with the regulation implementing Section 504, at 34 C.F.R. 104.23(a).

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<sup>16</sup> Under Section 504, facilities constructed or altered after January 17, 1991, must meet the requirements of UFAS. Because UFAS and ADAAG have similar requirements, OCR may permit ADAAG as an acceptable alternative.

The entrance of White Hall is comprised of exterior double-leaf doors in series with interior double-leaf doors. Both sets of doors swing outward, and they are large and heavy. During OCR's on-site visit, OCR determined that the entrance doors are automatic and operated by push buttons outside the building, inside the lobby, and inside the vestibule between the doors in series. OCR also tested the doors and determined that they were functional; and OCR did not otherwise obtain any information to indicate that there were any other problems or issues with the doors that would render them inaccessible to individuals with disabilities.

The University provided OCR with information indicating that the automatic doors were installed in XXXX. Therefore, the doors were operated manually, and were not automatic, when the Complainant resided in White Hall XXXX; however, the University was unable to provide OCR with any information regarding the weight of the manual doors. Because the Complainant alleged that the manual-open doors were too heavy for her prior to the installation of the automatic doors, the University may have failed to ensure White Hall was readily accessible during the XXXX academic year. Nevertheless, any issue that existed XXXX years ago is untimely, and because the doors are currently operational, it has since been resolved.

Based on the foregoing, OCR determined that there was insufficient evidence to substantiate that the University discriminates against individuals with disabilities, with respect to the accessible entrance of White Hall, as the Complainant alleged. OCR determined that the designated accessible entrance includes automatic doors, which are operational; therefore, neither students with disabilities nor non-disabled students are required to pull the doors open. Accordingly, OCR will take no further action regarding the portion of Allegation 3 pertaining to White Hall.

### **Conclusion**

On August 16, 2017, the University agreed to implement the enclosed Resolution Agreement (Agreement) pursuant to Section 303(b) of OCR's *Case Processing Manual*, which commits the University to take specific steps to address the identified areas of noncompliance, as discussed in Allegations 2 and 3 above, as it pertains to New Dining Hall, Dubois Hall, and Twitchell Hall, and to provide an individual remedy to the Complainant. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively.

This concludes OCR's investigation of the complaint. This letter 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. 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 complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, or participates in an OCR proceeding. If this happens, the individual may file a 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. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Erika Westry or Amy Williams, the OCR attorneys assigned to this complaint, at 202-453-7025 or [erika.westry@ed.gov](mailto:erika.westry@ed.gov), or at 202-453-5933 or [amy.williams2@ed.gov](mailto:amy.williams2@ed.gov).

Sincerely,

/s/

Letisha Morgan  
Team Leader, Team II  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Faye Hardy-Lucas, Esq.  
Doretha Spells, Vice President of Business Affairs and Treasurer