



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

September 11, 2018

Dr. James A. Anderson
Chancellor
Chancellor's Office
Fayetteville State University
1200 Murchison Road
Fayetteville, North Carolina 28301

RE: OCR Complaint No. 11-18-2169
Resolution Letter

Dear Dr. Anderson:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on March 15, 2018 against Fayetteville State University (the University). The Complainant alleges that the University discriminates on the basis of disability. Specifically, the complaint alleges that the University fails to provide accessible parking for students with disabilities.

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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the investigation, OCR reviewed documents provided by the Complainant and the University, and interviewed the Complainant. Before OCR completed its investigation, the University expressed a willingness to resolve the complaint on May 25, 2018 pursuant to Section 302 of OCR's *Case Processing Manual*, by taking the steps set out in the enclosed Resolution Agreement. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation

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

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.

The regulations implementing Section 504 and Title II each contain 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 the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require 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 Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require 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 Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require 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 the Section 504 and Title II regulations 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). Under the Title II regulation, recipient had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipient had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation

provides that recipients are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. 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.

Background

The Complainant is an enrolled student at the University who commutes to campus for classes by car. He was diagnosed with XXXXX. As a commuting student, the Complainant has a parking permit that allows him to park in Commuting Student parking lots. He also has an accessible parking permit that allows him to park in accessible parking spaces.

The Complainant explained that the Commuting Student parking lots are far from the buildings where his classes are held, but that there are a number of Faculty/Staff parking lots adjacent to those buildings.¹ As a result, the Complainant frequently parks in the accessible parking spaces in the Faculty/Staff parking lots, despite only having a Commuting Student parking permit.² He explained that because he parked in the Faculty/Staff parking lots, he received a number of parking tickets during the 2017-2018 academic year. Despite successfully appealing the parking tickets, the Complainant has continued to receive tickets for parking in the accessible parking spaces in the Faculty/Staff parking lots.

The University, via its narrative response, asserts that individuals permitted to use accessible parking spaces can use accessible parking spaces wherever they are on campus “including lots that are otherwise designated for a particular group.” However, the University’s parking policy – *Ordinance Regulating Traffic and Parking on the Campus of Fayetteville State University* – states in reference to “disability permits”:

“Permits will be assigned from zones campus wide, and their cost will be the same as the regular zone permit. The Police Department will determine the zone based on need and availability. By displaying the permit, an individual may park in the individual’s assigned space or any unreserved space within the individual’s designated zone.”

Further, the University’s *Regulations Governing Motor Vehicle Parking* states that “Handicapped faculty, staff, or students must purchase an FSU parking permit and park in designated handicapped spaces within their assigned zone.”

¹ The Complainant noted that some of the accessible parking spaces in the Commuting Student parking lots are nearly 300 yards from the buildings he uses. Further, the University reported that there is not shuttle bus or other transportation on campus between parking lots and campus facilities and/or buildings.

² The Complainant noted that he does not have access to a few of the Faculty/Staff parking lots, which are close to the buildings he uses, because they are behind locked gates. He explained that he would like to be able to park in those lots.

In addition to raising concerns regarding his own circumstances, the Complainant alleged that there were not enough accessible parking spaces for students with disabilities at the University more generally. The University informed OCR that there are a total of 2,349 parking spaces on the campus, and 128 of those are reserved as accessible parking spaces. The University did not provide the total number of parking spaces and the number of corresponding accessible parking spaces per lot. However, OCR reviewed a copy of the campus map, which designates the various parking lots. The map includes an icon of the International Symbol of Accessibility on parking lots that have accessible parking spaces. Not all of the parking lots on the map have this icon associated with them, but most of the Commuting Student parking lots do. OCR also viewed satellite images of the University's parking spaces via Google maps, and was able to view some accessible parking spaces in the Commuting Student parking lots.³ However, OCR did not conduct a site visit or gather more specific information regarding the number of accessible parking spaces in each parking lot, prior to the University requesting to voluntarily resolve the complaint and prior to OCR concluding the investigation of the complaint.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the University signed the enclosed Resolution Agreement on September 10, 2018, which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the University's implementation of the Agreement until the University has fulfilled the terms of the Agreement. Failure to implement the Agreement could result in OCR reopening the complaint.

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, assists, or participates in a proceeding under a law enforced by OCR. 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

³ According to the University, there are 4 parking lots which are gated, Lots E, B, M, and O. According to the campus map, they are all Faculty/Staff parking lots, although it appears that Lot O may be connected to a Resident Student parking lot, therefore allowing residential students to park in a gated lot. OCR has not confirmed this information with the University. Regular Faculty/Staff parking permits cost \$125. Faculty/Staff parking permits for the gated lots cost \$275. The Student parking permits cost \$70, and the Student parking permits for gated lots cost \$75, although based on the information OCR has thus far in the investigation, it is not clear whether there are any Commuting Student parking lots.

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, please contact Shana Heller, the OCR attorney assigned to this complaint, at 202-453-6599 or Shana.Heller@ed.gov.

Sincerely,

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

Enclosure

cc: Wanda Jenkins, General Counsel, via email: wjjenkins@uncfsu.edu