



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

June 6, 2019

Angel Cabrera, Ph.D.
President
George Mason University
4400 University Drive
Fairfax, Virginia 22030

Re: OCR Complaint No. 11-19-2059
Resolution Letter

Dear Dr. Cabrera:

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 December 11, 2018, against George Mason University (the University). The complaint alleges that the University discriminated against students with disabilities, in particular students with mobility impairments. Specifically, the complaint alleges that:

1. The University's Student Union Building, Aquia Building, and the Mason Pond Parking Garage do not have van accessible parking spaces;
2. The University's Center for the Arts does not have an adequate number of van accessible parking spaces; and
3. The entrance door to the University's Geography Office in Exploratory Hall is inaccessible.

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 of the ADA) 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.

Summary of Investigation

During the investigation, OCR interviewed the Complainant, reviewed documents provided by the University, and conducted a site visit on April 23, 2019.

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

Before OCR completed its investigation, the University expressed a willingness to resolve the complaint on May 13, 2019. OCR determined that it is appropriate to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement.

Facts

The Complainant was enrolled at the University during the 2018-2019 academic year. The Complainant utilizes a XXXXX. A XXXXX. The Complainant is registered with the University's Disability Services office and takes exams in the disability testing center located in the Student Union Building. The Complainant has had classes in the Aquia Building and in the Music/Theater building behind the Center for the Arts. The Complainant asserts that the Mason Pond Parking Deck is not a suitable location XXXXX because it contains no van accessible parking spaces. The Complainant has raised accessibility concerns with a member of the Disability Services team and met to discuss his concerns with the University's ADA Coordinator.

The University is in the midst of a multi-year core campus infrastructure project impacting various parts of the campus, including some of the locations identified by the Complainant as areas of inaccessibility. The University's website provides construction updates and while on-site, OCR observed signage detailing the most recent information related to accessible routes impacted by construction.

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 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, recipients 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 recipients had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (the 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.

Allegation 1

With respect to Allegation 1, the Complainant alleged that the University's Student Union Building, Aquia Building, and the Mason Pond Parking Deck do not have designated van accessible parking spaces.

Applicable Standards

The facilities at issue in the complaint were constructed at different times and, therefore, were subject to various accessibility standards when built. However, OCR used the 2010 Standards in determining whether the University provided an adequate amount of accessible parking, because based on the information obtained thus far in its investigation, the University has recently restriped or has plans in the near future to re-stripe the parking facilities in question; and because generally,

the minimum number of accessible parking spaces under the various accessibility standards remain the same.¹

Section 208.2 of the 2010 Standards identifies the minimum number of accessible parking spaces, including van accessible spaces, that must be provided based on the total number of parking spaces provided in a parking facility. Section 208.2.4 states that for every six or fraction of six parking spaces required by Section 208.2 to comply with Section 502, at least one shall be a van parking space complying with Section 502. Section 502.2 requires that car parking spaces be, at a minimum, 96 inches wide, and van parking spaces generally shall be 132 inches wide, at a minimum², and that each shall have an adjacent access aisle complying with Section 502.3.³ Section 502.6 requires that parking space identification signs shall include the International Symbol of Accessibility and that signage shall be 60 inches minimum above the ground surface measured to the bottom of the sign. Section 502.6 provides that signs identifying van parking spaces shall contain the designation “van accessible” and that signage shall be 60 inches minimum above the finish floor or ground surface measured to the bottom of the sign. Section 502.3.2 provides that access aisles should be marked so as to discourage parking in them but does not specify the method and color of marking. Section 502.3.4 notes that access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking spaces.

Analysis

The concerns raised by the Complainant relate to the existence of van accessible parking spaces at the University’s Student Union Building, Aquia Building, and Mason Pond Parking Deck.

Parking at Aquia Building and Student Union Building

The University maintained that a total of 27 surface parking spaces are available to serve the Aquia Building and Student Union Building (SUB), which are adjacent to each other: 12 of the 27 parking spaces (all located at SUB) are accessible⁴; and that two of the 12 are van accessible. Due to ongoing, active construction along Aquia Creek Lane, OCR was not able to verify the University’s assertion that a total of 27 parking spaces serve the two buildings.⁵ However, OCR confirmed that a total of 12 designated accessible parking spaces were all located at SUB.⁶ OCR confirmed that

¹ UFAS at Section 4.1.1(5)(a)), ADAAG at Section 4.1.2(5)(a)), and the 2010 Standards at Section 208.2, contain the same requirements for the minimum number of accessible parking spaces. However, as explained below, the required minimum number of van accessible parking spaces varies depending on the applicable accessibility standard.

² There is an exception to Section 502.2 of the 2010 Standards with respect to the requirement that van parking spaces shall be 132 inches wide. Specifically, van accessible parking spaces are permitted to be 96 inches wide minimum *if* the width of an immediately adjoining access aisle is 96 inches minimum.

³ Section 502.3 of the 2010 Standards states that two parking spaces shall be permitted to share a common access aisle.

⁴ During OCR’s site visit on April 23, 2019, the ADA Coordinator advised that construction impacting former and current parking spaces next to the Aquia Building was estimated to be completed in approximately one month. In its response to OCR, the University reported that once construction in the area has been completed, a van accessible parking space will be located on an accessible route next to the Aquia Building loading dock, off of Aquia Creek Lane.

⁵ During OCR’s site visit on April 23, 2019, active construction involving the use of equipment, temporary construction fencing, construction debris, and flaggers impeded OCR’s access to some of the parking in close proximity to the Aquia Building and next to Buchanan Hall.

⁶ One of the accessible parking spaces behind SUB has been designated as “Handicap Visitor Parking” with a 60-minute time limit. The University explained that the designation is intended to facilitate the availability of accessible

two of the parking spaces are designated van accessible, and in conjunction with the shared access aisle, each meets the minimum width requirements of Sections 502.2 and 502.3 of the 2010 Standards.⁷ In addition, each space bears signage designating it as van accessible.⁸

As noted above, ongoing construction has impacted parking areas behind and on the side of the Aquia Building. During OCR's visit, the former side lot was fenced off as part of a construction staging and work zone, and the few parking spaces along Aquia Creek Road outside the Aquia Building were blocked by construction vehicles. The University asserted that during the period of construction, the parking at SUB is intended to serve both buildings. It is reasonable that the parking at SUB may temporarily serve as accessible parking for the Aquia Building during construction; however, given that the University anticipates restoring parking directly at the Aquia Building post-construction, the parking at that facility will need to comply with the 2010 Standards.

As discussed above, the University expressed a willingness to resolve this allegation. Through the voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University is required to ensure the provision of accessible parking, including van accessible parking, at the Aquia Building once active construction in that area is complete, in compliance with the 2010 Standards.

Mason Pond Parking Deck

The University asserted that the Mason Pond Parking Deck contains a total of 844 parking spaces; that 38 are designated accessible; and, of those, 17 are van accessible. In addition, the University asserted, and OCR confirmed that the parking deck, which is otherwise a pay facility, allows 30 minutes of free access. OCR's review of schematic drawings provided by the University and on-site inspection of the Mason Pond Parking Deck confirmed that 38 parking spaces dispersed throughout the facility have been designated as accessible. OCR's review of several parking spaces on each of the five levels of the facility confirmed that the designated accessible spaces and adjoining access aisles meet the minimum width requirements of Sections 502.2 and 502.3 of the 2010 Standards. However, OCR was unable to confirm whether and, if so, which of the spaces are van accessible, as none contained signage specifically designating them as van accessible as required by Section 502.6 of the 2010 Standards. In addition, in at least one location (namely the

parking to individuals who are accessing the building for limited purposes such as visiting the registrar's office or for other short-term purposes.

⁷ OCR notes that the Complainant was concerned that the location of the van accessible spaces requires that he cross Aquia Creek Lane, and that due to construction and weather, he found Aquia Creek Lane difficult to cross in late January due to what he described as "an impassable pool of slush and mud that had formed from the melted snow." The University responded to the Complainant's concerns by reporting his concerns and noted that the area was immediately cleaned up so that the area was cleared and remains clear. They also notified the Complainant of an alternative, nearby location at which he could XXXXXX. In addition, the University has completed the sidewalk from which those parking in van accessible parking spaces can access and then cross Aquia Creek Lane via a crosswalk.

⁸ During the site visit, OCR observed that the signage is affixed to temporary fencing associated with the University's construction project. The University informed OCR that once construction is complete, new signage will be erected to more permanently designate the van accessible spaces.

rooftop level), the signage was positioned too low to be consistent with the requirements of Section 502.6.⁹

Although the University provides an adequate number of accessible parking spaces at the Mason Pond Parking Deck¹⁰, OCR was unable to confirm whether the facility offers an adequate number of van accessible spaces as none were designated as such.¹¹

As discussed above, the University expressed a willingness to resolve this allegation. Through the voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, and because the University has asserted that it intends to re-stripe the facility during the summer of 2019, the University is required to ensure the provision of accessible parking, including van accessible parking and appropriate signage, at the Mason Pond Parking Deck to the maximum extent feasible, once active construction in that area is complete, in compliance with the 2010 Standards.

Allegation 2

Regarding Allegation 2, the Complainant alleged that the University's Center for the Arts (the Center) does not have an adequate number of van accessible parking spaces. The Complainant attended class at the Music/Theater building behind the Center. The University maintains that the Mason Pond Parking Deck serves as designated visitor parking for the Center. OCR's concerns about the Mason Pond Parking Deck, including the provision of van accessible parking spaces are addressed above. The University asserted and OCR confirmed that immediately outside the Center, there is an area designated to allow 15-minute parking to assist with dropping off of individuals.

The University also asserted that 53 angled parking spaces are located on the portion of Mason Pond Drive that runs alongside of the Center. OCR observed at least three angled spaces that are designated accessible and are adjacent to an area that serves or could serve as an access aisle; however, none of the spaces is designated as van accessible. The University reported that a number of the 53 angled spaces along Mason Pond Drive are reserved for University permit holders who also have state-issued accessible parking hangtags. These spaces contain identification signs that include the International Symbol of Accessibility. The University noted that the majority of these spaces do not have access aisles and are not in close proximity to a curb cut and therefore are not counted by the University as accessible parking.¹² The University noted that one of the spaces has

⁹ Section 502.6 states that signs shall be 60 inches minimum above the finish floor or ground surface measured to the bottom of the sign. OCR measured the height of the signage for accessible parking spaces on the roof top level and found that the bottom of one sign was only 23.5 inches from the ground surface.

¹⁰ Section 208.2 of the 2010 Standards requires that where the total number of parking spaces in a parking facility ranges between 501 up to 1000, that a minimum of 2 percent of the total spaces must be accessible parking spaces. Two percent of 844 would require a minimum of 17 accessible spaces.

¹¹ Under ADAAG Section 4.1.2(5)(b), one in every eight accessible spaces must be designated as "van accessible." Under Section 208.2.4 of the 2010 standards, one in every six accessible spaces must be designated as "van accessible."

¹² According to the University, these spaces are intended for use by student and faculty members with mobility impairments who may not be able to walk long distances but who do not utilize wheelchairs.

an access aisle wide enough for van accessibility; however, it is an angled space with the access aisle on the driver's side and, as such, does not meet the requirements of the 2010 Standards.¹³

OCR is concerned about the lack of van accessible parking along Mason Pond Drive in front of the Center. The University has asserted the difficulty of providing van accessible parking in that location due to the current configuration of angled parking, grass, and existing curbs. In addition, despite the fact that the University does not include the additional spaces in its count of designated accessible parking spaces, OCR is concerned that designating those spaces with signage that identifies them as accessible parking when they do not conform with the 2010 Standards is inappropriate.

During OCR's site visit, the ADA Coordinator noted that the Buchanan Hall parking lot serves the same buildings as the street parking on Mason Pond Drive. The University stated that all 28 parking spaces in the Buchanan Hall lot are designated accessible, three of them are van accessible, and that construction had temporarily excavated additional van accessible spaces in the lot. During OCR's visit to review facilities, construction workers were actively restoring parking spaces that had been temporarily excavated. OCR confirmed the existence of three designated van accessible parking spaces.

OCR also determined that two van accessible parking spaces that shared an access aisle meet the exception identified in Section 502.2 of the 2010 Standards that provides that van accessible spaces may be 96 inches wide minimum where the access aisle is 96 inches wide minimum.¹⁴ In addition, the two spaces had signage consistent with the requirements of Section 502.6 of the 2010 Standards.

However, OCR has concerns about the third space designated as van accessible. Specifically, while the signage indicates it is van accessible, the third designated parking space and its adjoining access aisle failed to satisfy the minimum width requirement of Sections 502.2 and 502.3 of the 2010 Standards.¹⁵ Given the active construction in that parking lot, it is unclear whether the University intends to designate a different parking space in the Buchanan Hall lot as van accessible in lieu of the currently designated third space.

As discussed above, the University expressed a willingness to resolve Allegation 2. Through the voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University is required to ensure that the designated accessible parking spaces along Mason Pond Drive, including the van accessible space(s), comply with the 2010 Standards, including with respect to number, size, slope, signage, adjacent access aisle, and adjoining accessible routes to the accessible entrances of the facilities and buildings served by the parking at Mason Pond Drive. In addition, the University will ensure that the designated van accessible parking spaces at the Buchanan Hall parking lot comply with the 2010 Standards, including with respect to number, size, slope, signage, adjacent access aisle, and adjoining accessible routes.

¹³ Section 502.3.4 of the 2010 Standards provides that angled van parking spaces shall have access aisles on the passenger side of the parking spaces.

¹⁴ The two designated van accessible spaces as well as the shared access aisle each measured approximately 105 inches wide.

¹⁵ The designated van accessible parking space measured approximately 112 inches wide and the adjoining access aisle measured approximately 48 inches wide.

Allegation 3

With respect to Allegation 3, the Complainant alleged that the entrance door to the University's Geography Office on the second floor of Exploratory Hall is inaccessible. In particular, the Complainant is concerned that the entrance door lacks a push button operating system. He told OCR that he cannot XXXXX. He informed OCR that on occasion, he has asked XXXXX the Geography Office. The University asserted to OCR that the main entrance door to the Geography Office on the second floor of Exploratory Hall is accessible.

The University reported that Exploratory Hall underwent a renovation and construction of a new addition in 2013. As such, OCR has determined that the 2010 Standards are applicable, including the provisions of Section 404.2 that cover manual doors and doorways. Specifically, Section 404.2.3 requires that door openings provide a clear width of 32 inches minimum, and Section 404.2.4.1 governs the minimum maneuvering clearance depending on the direction of approach (front, from hinge side, from latch side). Section 404.2.8.1 specifies that door closers shall be adjusted so that from an open position of 90 degrees, the time required to move the door to a position of 12 degrees from the latch is 5 seconds minimum. In addition, Section 404.2.9 specifies that the force for pushing or pulling open an interior hinged door shall not exceed 5 pounds maximum.

OCR's review of the main entrance to the Geography Office suite, as well as the secondary entrance and the exit door, confirmed the University's assertion that they meet the minimum requirements for clear opening width, maneuvering clearance, and door closing speed. However, OCR was unable to confirm the University's assertion that the door opening pressure of the three doors was less than 5 pounds each. Rather, OCR's door opening pressure readings were considerably greater than those asserted by the University.

As discussed above, the University expressed a willingness to resolve Allegation 3. Through the voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University is required to provide sufficient documentation substantiating its door opening pressure readings and a plan to maintain their compliance with the 2010 Standards, or it will install a door opening mechanism on the requisite doors in compliance with the 2010 Standards.

Conclusion

On June 3, 2019, the University signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address the complaint allegations. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement provides that upon completion of the construction impacting the Aquia Building, the University will ensure that accessible parking spaces at the Aquia Building are compliant with the 2010 Standards, including with regard to a sufficient number and size of accessible parking spaces, including van accessible parking spaces. In addition, the Agreement requires the University to ensure that the designated van accessible parking spaces at the Mason Pond Parking Deck comply with the 2010 Standards to the maximum extent feasible and that the designated van accessible parking spaces at the Buchanan Hall parking lot also comply with the 2010 Standards. Pursuant to the Agreement, the University will ensure that the designated accessible parking spaces along Mason Pond Drive,

including van accessible space(s), comply with the 2010 Standards, including with respect to the number, size, slope, signage, adjacent access aisle, and adjoining accessible routes to the accessible entrances to the facilities and buildings served by the parking at Mason Pond Drive. Finally, the Agreement provides that the University will ensure that the interior entrance and exit doors to the Geography Office in Exploratory Hall are accessible to persons with disabilities. Please review the enclosed Agreement for further details. OCR will monitor the University's implementation of the Agreement until the University has fulfilled the terms of the Agreement.

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 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 cooperation of University personnel, most notably XXXXX, Associate Director & ADA Coordinator Compliance, Diversity & Ethics, in the resolution of this complaint.

If you have any questions regarding this letter, please contact Betsy Trice or Jeanette Tejada-Bustos, the OCR attorneys assigned to this complaint. You may reach Ms. Trice at 202-453-5931 or betsy.trice@ed.gov or Ms. Tejada-Bustos at 202-453-6084 or Jeanette.TejadaBustos@ed.gov.

Sincerely,

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

Enclosure

cc: XXXXX, Associate Director and ADA Coordinator (*via email*)