



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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February 9, 2023

By email only to chancellor@uncg.edu

Dr. Franklin D. Gilliam, Jr.
Chancellor
University of North Carolina Greensboro
303 Mossman Building
Greensboro, North Carolina 27402

Re: Case No. 11-22-2279
University of North Carolina Greensboro

Dear Dr. Gilliam, Jr.:

This letter is to advise you of the outcome of the investigation that the U.S. Department of Education, Office for Civil Rights (OCR) conducted of the complaint filed against University of North Carolina Greensboro on XXXXX. The Complainant alleged that the University discriminated against individuals on the basis of disability because the Special Collections and Rare Books room on the second floor of the Walter Clinton Jackson Library (the Library) is not accessible by wheelchair.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, 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. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131 *et seq.*, 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. The University receives federal financial assistance from the Department of Education and is a public entity, so OCR has jurisdiction over it pursuant to Section 504 and Title II.

During its investigation to date, OCR reviewed information provided by the Complainant and the University. Before OCR completed its investigation, the University expressed interest in resolving the allegation pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the school expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them through a resolution agreement. OCR has identified concerns in its investigation that can be resolved through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

Evidence Obtained to Date

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

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The Complainant alleged that the Special Collections and Rare Books room located on the Library's second floor is inaccessible for individuals with mobility disabilities. Specifically, the Complainant alleged that the one elevator providing access to the second floor is difficult to locate and too small to accommodate most wheelchairs. XXXXX further asserted that several XXXXX classes require students to visit the Special Collections and Rare Books room.

The University informed OCR that the Library was constructed in 1950 and its tower addition opened in 1973. According to the University, University staff have a practice of working with students and researchers to meet their needs while using the Special Collections and Rare Books room on the second floor of the Library. University staff are proactive in asking instructors about student accommodation needs and any faculty member planning to bring their class to the Special Collections and Rare Books room may contact University staff regarding accommodations. For individuals who are unable to access the Special Collections and Rare Books room due to a mobility disability, University staff make archival material available in an area of the Library's main floor reference room or in instructional spaces that are accessible. However, the evidence to date fails to indicate how this plan is communicated or otherwise publicized to individuals with mobility impairments and the University did not indicate the existence of any written or formal practice that staff consistently and uniformly follow.

Legal Standard

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 school district's programs or activities because the school district'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 school district'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 university 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 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. In choosing among available methods of meeting the requirements, a university must give priority

to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

Analysis

The University informed OCR that it built the library in 1950, and that there have not been any alterations after 1977. Accordingly, the library constitutes an existing facility, and to comply with Section 504 and Title II, the University must ensure that any services, programs, or activities taking place within it, including those in the Special Collections and Rare Books room, are readily accessible to and usable by individuals with disabilities. The University informed OCR that it has in place a plan should an individual with a mobility impairment require access to this room – namely, it makes archival material available in an area of the Library's main floor reference room or in instructional spaces that are accessible to these individuals. However, the evidence to date fails to indicate that this method is appropriately publicized such that individuals with disabilities understand how to access this room.

Conclusion

Prior to OCR investigating further and reaching a compliance determination regarding the issue investigated, the University expressed interest in voluntarily resolving this complaint. Because OCR's preliminary investigation has revealed potential concerns that can be addressed in a resolution agreement, OCR has determined that voluntary resolution prior to the conclusion of the investigation pursuant to Section 302 of OCR's *Case Processing Manual* (CPM) is appropriate in this case.

XXXXXX, the University executed the enclosed Resolution Agreement (Agreement), which when fully implemented, will address the compliance concerns. The provisions of the Agreement are aligned with the allegation in the complaint and the information obtained during OCR's investigation to date and are consistent with the applicable regulations. OCR will monitor the implementation 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. OCR would like to make you aware that individuals who file complaints with OCR 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 against the University 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions, please contact the OCR attorneys assigned to this complaint, Michael Gerton at 202-245-7711 or michael.gerton@ed.gov and Alex Ussia at 202-987-1288 or alex.ussia@ed.gov.

Sincerely,

Jennifer Barmon
Team Leader, Team III
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Jerry D. Blakemore, Esq.
Kristen S. Bonatz, Esq.