



**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

October 23, 2023

By email only to Chancellor@nccu.edu

Dr. Johnson O. Akinleye
Chancellor
North Carolina Central University
1801 Fayetteville St.
Durham, NC 27707

Re: Case No. 11-23-2058
North Carolina Central University

Dear Dr. Akinleye:

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 North Carolina Central University. The complaint alleged that the University discriminated against students with mobility-related disabilities during the [redacted content] academic year when it failed to provide students with a means of evacuation that is equal to and as effective as the means of evacuation it provides to students without disabilities in the [redacted content] Building, which we will refer to as the Building.

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 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 because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation 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.

www.ed.gov

Facts

The Building was constructed on or around [redacted content], with elevator construction occurring in [redacted content], and elevator modernization completed on [redacted content]. The building is three stories with a basement. The University provided a written evacuation map for the building. The University stated that it does not have a written evacuation plan in place specifically for individuals with disabilities. The University further stated that it is currently working to employ a vendor to design building evacuation plans and procedures for campus buildings. The University said that it believes that stairwell landings in the Building should meet the requirements as an area of refuge that may be utilized during an evacuation.

Legal Standards

Title II and Section 504 do not contain specific provisions that set out what must be included in emergency evacuation plans to make those programs accessible to persons with disabilities. However, the general provisions of Section 504 and Title II require, among other things, that no qualified person with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of the University. 34 C.F.R. §§ 104.21 and 104.22; 28 C.F.R. §§ 35.149 and 35.150. Individuals with disabilities must be provided with an opportunity to obtain the same results, gain the same benefit, and reach the same level of achievement as is provided to others. 34 C.F.R. § 104.4, 28 C.F.R. § 35.130(b)(1)(iii).

Moreover, Section 504 and Title II do require that new or altered construction include areas of refuge for individuals with disabilities during an evacuation. Specifically, 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 university alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities. This provision sets forth specific architectural accessibility standards for facilities constructed or altered after particular dates. Relevant to this complaint, the Title II regulation provides that universities are required to comply with the 2010 ADA 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 ADA Standards, a university may use this standard as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 ADA Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

The 2010 ADA Standards incorporate by reference components of the International Building Code (IBC), including the requirement that buildings include an area of refuge, which is a fire-rated space on a level above and below the exit discharge level where people unable to use stairs can go to register a call for assistance and wait for evacuation. *See* 2010 ADA Standards at §105.2.4, incorporating by reference the IBC §1007.6 (2003), §1003.2.13.5 (2000). This area must provide direct access to an exit stairway or to an elevator equipped with standby power, and the doors providing access to it must have appropriate signage. Refuge areas are not required in facilities that are equipped throughout with an automated sprinkler systems in compliance with the IBC.

Analysis and Conclusion

The University admitted that there is no written evacuation plan for individuals with disabilities for the Building. OCR's review of the general evacuation map provided for the building did not identify any specific information on how to assist persons with a variety of disabilities during an evacuation. The University also did not provide OCR with information on how students and visitors with disabilities could access information regarding evacuation procedures for the building.

Due to the modernization of its elevator in [redacted content], the University is also subject to the 2010 ADA Standards, including its requirements pertaining to areas of refuge. Although the University acknowledged that its stairwell landings should meet these requirements, OCR has not received information to date indicating that they include appropriate signage or that individuals with disabilities would otherwise be aware that such a stairwell constitutes an area of refuge. Accordingly, OCR is concerned that the University does not provide equal access to its evacuation procedures to staff, students, and visitors with a variety of disabilities.

Before OCR completed its investigation of the complaint, the University expressed interest in resolving the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. On October 9, 2023, the University agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegation investigated. OCR will monitor the University's implementation of the agreement until the University is in compliance with the terms of the agreement and the statutes and regulations at issue.

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 investigator and attorney assigned to this complaint: Wanda

Frazier at 202-987-1450 or wanda.frazier@ed.gov, or Lee K. Robbins at 202-245-8301 or lee.k.robbins@ed.gov.

Sincerely,

D. Frank Vinik
Team Leader, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Fenita Morris-Shepard, Chief Legal Counsel