



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

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REGION XV  
MICHIGAN  
OHIO

January 22, 2020

Nichole DeCaprio, Esq.  
Associate Counsel  
Office of General Counsel  
Kent State University  
P.O. Box 5190  
Kent, Ohio 44242

Re: OCR Docket No. 15-18-2022

Dear Ms. DeCaprio:

This letter is to notify you of the disposition of the above-referenced complaint filed on October 18, 2017, with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against Kent State University (the University) alleging that the University discriminated against the Complainant based on disability (hard of hearing). Specifically, the complaint alleged that the University failed to provide the Complainant with auxiliary aids and services, when he attended [redacted] event at the University's Ludwig Recital Hall and was denied such requested aids and services (e.g., assistive listening systems).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 7904, 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), 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. As a recipient of Federal financial assistance from the Department and as a public entity, the University is subject to these laws.

Based on the complaint allegation, OCR opened an investigation of the following legal issues:

- whether the University, on the basis of disability, excluded a qualified individual with a disability from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity of the University, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4(a) and the Title II implementing regulation at 28 C.F.R. § 35.130(a);

- whether the University, on the basis of disability, excluded a qualified individual with a disability from participation in, denied the benefits of, or otherwise subjected to discrimination because its facilities are inaccessible to or unusable by individuals with disabilities, in violation of the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151; and
- whether the University failed to take appropriate steps to ensure that its communications with an applicant, a participant, a member of the public, and a companion with disabilities were as effective as its communications with others, in violation of the Title II implementing regulation at 28 C.F.R. § 35.160(a).

### **Summary of Investigation to Date**

To date, OCR investigated this complaint by reviewing information provided by the Complainant and the University.

The University is an 8-campus system with over 38,000 total students and just over 6,600 employees. Approximately 28,000 students are enrolled at the University's main campus located in Kent, Ohio, where the Ludwig Recital Hall (the Hall) is located.<sup>1</sup>

[paragraph redacted]

The University provided its response to this allegation. The University stated that construction began on the Hall on August 15, 1958. Since the original construction, the University most recently renovated the Hall in 2012 by replacing the seating and flooring, using the 1991 ADA Standards; OCR notes that since the University did not provide the exact date of 2012 renovation in its response, it is not clear whether the University used the appropriate accessibility standards when it renovated the Hall in 2012. The University stated that the Hall is “an intimate facility where most student and faculty recitals are held, as well as performances of the School of Music’s smaller ensembles” and provides 225 seats in total. The University stated that there is no permanent sound amplification system installed, as the Hall is a recital hall, but when the venue is used for functions other than recitals, a temporary sound support system can be used dependent on the size of the program.

The University stated that when a department schedules an event through University Events & Conference Services, their confirmation includes the following language:

ACCESSIBILITY NOTICE: Kent State University is committed to being a welcoming and inclusive environment to all its constituents, including persons with disabilities. As you plan your event, please remember to consider accessibility issues and possible requests, such as wheel-chair access (Note: special stage lift available for KSC Ballroom), American Sign Language interpreters, closed captioning (for videos, video clips, narrated power-points, etc.), enlarged font, text converted to Braille, etc.

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<sup>1</sup> [https://www.kent.edu/sites/default/files/file/2018%20FlashFacts%20KSU\\_0.pdf](https://www.kent.edu/sites/default/files/file/2018%20FlashFacts%20KSU_0.pdf).

If you have questions, please don't hesitate to contact the office of Student Accessibility Services at (330) 672-3391 or sas@kent.edu.

In response to OCR's request for a copy of the University's notice about how to request access to buildings, facilities, or programs which are not fully accessible to persons with disabilities, the University provided two web links: <https://www.kent.edu/accessibility>; and <https://www.kent.edu/hr/compliance-eoaa>. On January 24, 2018, OCR accessed these web links provided by the University. The web page, titled "Office of Compliance, Equal Opportunity and Affirmative Action," available at <https://www.kent.edu/hr/compliance-eoaa>, indicated that individuals could contact the Office of Compliance, Equal Opportunity/Affirmative Action for questions or an employee ADA accommodation. The other web page, titled "Accessibility Statement," available at <https://www.kent.edu/accessibility>, indicated that individuals could report an "accessibility concern." For example, it stated that for a concern regarding general event accommodations, a person could contact University Events and Conference Services at [toscheduling@kent.edu](mailto:toscheduling@kent.edu). When OCR accessed the links on December 4, 2019, the link for <https://www.kent.edu/hr/compliance-eoaa> no longer worked. The title of the web page available at <https://www.kent.edu/accessibility> was changed to "Accessibility Matters at Kent State University" and the web page still consisted mainly of an online feedback form to express an accessibility concern, stating that "Kent State University is committed to making its physical and digital environments accessible and inclusive for all individuals." This web page stated that non-urgent concerns could be reported through the form and urgent concerns could be reported using a contact directory on the page. The following contacts were listed under "Event Accommodations": for general events, the contact information for University Events and Conference Services, and for athletic events, the University's Assistant Athletic Director Facilities and Operations, Intercollegiate Athletics. Under the category "Facilities," under the description "Buildings, grounds, physical environment," the contact information for the University's "Service Center" was provided.

Regarding [redacted] event, the University provided a copy of document, titled "Audio Visual Equipment & Labor Requests." This document indicated that a sound system and microphones were requested and provided for the event at the Hall. The University also provided a copy of event invitation, [redacted]. The event invitation provided the date and location of the event and indicated that it was hosted by the [redacted] faculty. Under the heading entitled "Message From Host," the event invitation stated that [redacted]. The event invitation did not provide any information regarding availability of accessible services, activities, and facilities or how to request accommodations, or auxiliary aids or services. The University also did not provide any documentation related to the [redacted] event that included the "Accessibility Notice" or the University's web page links stated above.

During the investigation, the University indicated that the University has a portable device which can be set up ahead of time if requested in advance. The University indicated that during the [redacted] event, there was no special device provided for individuals who were hard of hearing at the Hall because the University did not receive any request for such accommodation. The University did not provide OCR with information that can confirm whether the portable device the University can set up ahead of time is an assistive listening system.

## **Applicable Legal Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iii); 28 C.F.R. § 35.130(b)(1)(i)-(iii).

The Section 504 and Title II regulations also state that no qualified person with a disability shall, because a covered entity's facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the entity's programs or activities. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution 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. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under the Title II regulation, existing facilities are those for which construction began on or before January 26, 1992.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, alteration of existing facilities, construction of new facilities, or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f). The Title II regulation also requires, at 28 C.F.R. § 35.163, that a public entity ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). Under the Section 504 regulation, a facility will be considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, the applicable date for new construction is January 26, 1992. With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). Compare 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), with 34 C.F.R. § 104.23(c) (2012). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to UFAS or the 1991 Americans with Disabilities Act (ADA) Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the Section 504 regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

The U.S. Department of Justice published revised regulations for Titles II and III of the ADA on September 15, 2010. These regulations adopted revised enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them for construction or alterations commencing September 15, 2010, until their effective date. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

In reviewing program access for an existing facility, the 2010 ADA Standards may also be used as a guide to understand whether individuals with disabilities can participate in the program, activity, or service.

The 2010 ADA Standards, at 219, require an assistive listening system to be provided in each assembly area where audible communication is integral to the use of the space, except that, other

than in courtrooms, assistive listening systems shall not be required where audio amplification is not provided. The 2010 ADA Standards at 219 and 706 specify the number of receivers that are required, depending on the seating capacity in the assembly area, and the minimum required performance levels for volume, interference, and distortion. Advisory 706.1 indicates that there are a number of different categories of assistive listening systems that may be used, depending on the given space and application. The 2010 ADA Standards at 216.10 require that each assembly area required to provide assistive listening systems must provide signs informing patrons of the availability of the assistive listening system.

The Title II implementing regulation, at 28 C.F.R. § 35.160(a), requires that public entities take appropriate steps to ensure that communications with persons with disabilities are as effective as communications with others. The regulation, at 28 C.F.R. § 35.160(b)(1) requires public entities to furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity. The Title II regulation requires that the type of auxiliary aid or service necessary to ensure effective communication vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place; and that, in order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. The regulation further states that, in determining what types of auxiliary aids and services are necessary, a public entity shall give primary consideration to the requests of individuals with disabilities. 28 C.F.R. § 35.160(b)(2).

In addition, the Title II regulation, at 28 C.F.R. § 35.107(b), requires that a public entity that employs 50 or more persons adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Title II regulation. The Section 504 regulation contains a similar requirement at 34 C.F.R. § 104.7(b) for a recipient that employs fifteen or more persons.

## **Resolution and Conclusion**

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the issuance of a final investigative determination, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. In this case, on January 25, 2018, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate.

The information obtained to date indicates several compliance concerns under the Section 504 and Title II regulations. First, it appears the University may not have provided adequate notice for this event or for other events about the availability of accommodations and accessibility services and how to request such accommodations and services as needed to attend an event. In addition, the University does not appear to have a process through which to provide necessary

auxiliary aids and services or accessibility services for events upon request and in a timely manner, nor the actual equipment that would be necessary to respond to a request. In addition, although the University asserted that the Hall does not have a permanent sound amplification system installed for recitals, it indicated that when the venue is used for functions other than recitals, a temporary sound support system is used, at least for a subset of events. Given the stated uses for the Hall, audible communication is integral to the use of the space, and audio amplification is provided in the Hall, even if no permanent sound system is installed. While the University indicated that it has a portable device which could be set up if requested in advance, the information obtained to date did not provide sufficient information that the University's portable device would satisfy program accessibility requirements pursuant to the applicable 2010 ADA Standards. Finally, the information obtained to date indicates that the Complainant submitted a written complaint alleging violations of the ADA to the University's president in September 2017 but received no response.

To complete its investigation, OCR would need to obtain and review additional information (e.g., exact date of 2012 renovation of the Hall to confirm whether the University used the appropriate accessibility standards, updated information about event notices and accessibility planning, information about the University's portable device, and the University's documentation about the Complainant's ADA grievance) from the University. OCR would also need to conduct interviews with relevant staff (e.g., [redacted] event organizer from the University's School of Health Science, staff at the University Events & Conference Services, and the University's Section 504/Title II Coordinator) at the University. On January 21, 2020, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This concludes OCR's investigation of the complaint and 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.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, OCR will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The Complainant may file a private suit in federal court, whether or not OCR finds a violation.

OCR looks forward to receiving the University's first monitoring report by February 28, 2020. For questions about implementation of the Agreement, please contact Ms. Suwan Park. Ms. Park will be overseeing the monitoring and can be reached by telephone at (216) 522-4972 or by e-mail at [Suwan.Park@ed.gov](mailto:Suwan.Park@ed.gov). If you have questions about this letter, please contact me by telephone at (216) 522-7634.

Sincerely,

/s/

Donald S. Yarab  
Supervisory Attorney/Team Leader

Enclosure