



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

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REGION XV  
MICHIGAN  
OHIO

March 31, 2020

**VIA E-mail Only:** brock1aw@cmich.edu

Andrew W. Brockman  
Assistant General Counsel  
Office # WA 103  
Central Michigan University  
Mount Pleasant, MI 48859

Re: OCR Docket #15-18-2123

Dear Mr. Brockman:

This letter is to notify you of the disposition of the complaint filed on March 22, 2018, with the U.S. Department of Education (the Department), Office for Civil Rights (OCR), referred by the U.S. Department of Justice (DOJ), Civil Rights Division, against Central Michigan University (the University), which alleged discrimination and retaliation on the basis of disability. The complaint alleged that certain aspects of the University's main campus are inaccessible to individuals with mobility impairments and that it retaliated against the complainant (Complainant) for his complaints about accessibility. Specifically, the complaint alleged:

1. The University's Charles V. Park Library (the Library) lacks designated accessible parking on the shortest accessible route to an accessible entrance.
2. The University's Anspach Hall lacks designated accessible parking on the shortest accessible route to an accessible entrance, as the existing designated spaces are at building entrances that require the use of stairs.
3. The University allows persons without disabilities to park in designated accessible parking spaces serving Anspach Hall.
4. The University's Bovee University Center (the Center) lacks an accessible entrance and the elevator serving the building is inaccessible and at times inoperable.
5. The University retaliated against the Complainant when he complained about the parking at Anspach Hall by eliminating two accessible spaces and threatening him with arrest if he interfered with the removal of the spaces when he protested the matter with University police.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. Persons who seek to enforce their rights under these laws are also protected from retaliation. The University receives Federal financial assistance from the Department and is a public entity. Accordingly, the University is subject to the above-referenced statutes.

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

- Whether qualified persons with disabilities are being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the University's programs and activities because the University's facilities are inaccessible to and unusable by persons with disabilities in violation of Section 504's implementing regulation at 34 C.F.R. §§ 104.21-23 and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151.
- Whether the University intimidated, threatened, coerced, or discriminated against an individual for the purpose of interfering with any right or privilege secured by Section 504, and Title II or because the individual made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under these statutes in violation of Section 504's implementing regulation at 34 C.F.R. § 104.61 and/or Title II's implementing regulation at 28 C.F.R. § 35.134.
- Whether the University failed to adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by the Section 504 or Title II regulations, as required by the Section 504 and Title II regulations at 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

OCR's investigation of the complaint included a review of documents obtained from the University, an onsite visit that OCR conducted on September 5, 2019, to inspect the University's facilities, and interviews with University staff. OCR also provided the Complainant with the opportunity to respond to the information provided by the University. After a careful review of the information obtained during the investigation, OCR has concluded that with regards to Allegation #1 and Allegation #2, the parking areas serving the Library and Anspach Hall are not fully accessible to individuals with mobility impairments, in violation of Section 504 and Title II. The University signed the enclosed Resolution Agreement (Agreement) on March 25, 2020 which, once implemented, will address OCR's findings in accordance with Section 504 and Title II regarding these allegations. Regarding Allegation #3, Allegation #4 and Allegation #5, OCR found insufficient evidence to support that the University discriminated and retaliated against the Complainant based on disability in violation of Section 504 and Title II, as alleged.

A summary of the applicable legal standards, OCR’s investigation, the bases for OCR’s determinations, and the terms of the Agreement are presented below.

### **Summary of OCR’s Investigation**

The University is a public research university in Mt. Pleasant, Michigan. The Library, the Center, and Anspach Hall are centrally located on the University’s main campus. The Library and the Center sit across from each other on E Preston Street. Anspach Hall, an academic building housing the University’s Department of English Language and Literature, is situated near the Library on S Washington Street. There are many parking lots on campus including lots in proximity to each of these buildings. The Complainant was a student at the University during the 2017-2018 academic year.

### **Accessibility Standards**

The Section 504 implementing regulation at 34 C.F.R. § 104.21 and Title II implementing regulation at 28 C.F.R. § 35.149 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. The regulations’ reference standards for determining whether an entity’s programs, activities, and services are accessible to individuals with disabilities depend upon whether the facilities are determined to be existing construction, 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 compliance standard is referred to as “program access.” 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.

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 is considered new construction if construction began (ground was broken) on or after June 3, 1977. Under the Title II regulation, a facility is considered new construction if the construction was commenced after January 26, 1992.

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. With regard to parking, the U.S. Department of Justice has stated that, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards, and that failure to do so would violate the ADA.<sup>1</sup>

As set forth above, the Title II regulations require alterations that affect access to an area that contains a primary function to be made such that the route, including sidewalks, parking areas, and entrances, is readily accessible. Thus, the regulations require that alterations to the routes and parking at issue in this complaint should have been made to comply with the 2010 ADA Standards. Because each facility OCR reviewed has undergone renovations or alterations since 2010, as explained further below, OCR determined that the facilities are subject to the 2010 ADA Standards.

Where OCR found compliance violations regarding these standards, the applicable 2010 ADA Standards are identified.

### **Allegation 1**

The Complainant alleged that the Library lacks accessible parking and that parking areas serving the Library are not located near the building.

The main parking for the Library is Parking Lot 27 (Lot 27). This is a large asphalt surface parking lot on the east side of the Library. Lot 27, with 256 parking spaces, has 6 parking spaces designated and marked as accessible for individuals with disabilities. Two of these are marked as van accessible. The 2010 ADA Standards at 208.2 require 1 accessible space for every 25 parking spaces in a parking facility. Under this standard, Lot 27 is required to have 7 accessible parking spaces since there are 256 total parking spaces. The standards further require that 1 of every 6 accessible spots, or every fraction of 6, must be van accessible, with a minimum of 1 van accessible space in any lot. Accordingly, Lot 27 is required to have 2 van accessible parking spaces, as it already does. Therefore, Lot 27 is short by 1 standard accessible parking space under the 2010 ADA Standards.

Each of the 6 accessible parking spaces are marked by signs. Out of the 6 accessible parking spaces, 2 of the spaces are identified by signage as being van accessible. Four of the marked accessible spaces are positioned immediately at the access route to the Library on the east side of the lot. Two of these spaces are marked by signs as van accessible. The other 2 marked accessible spaces in Lot 27 are adjacent to each other at the northwest corner of the lot. These spaces are positioned at a walkway that serves other nearby buildings.

The 2010 ADA Standards at 502.3.1 require access aisles for car and van spaces to be a minimum of 60 inches wide. An exception exists where van parking spaces shall be permitted to be a minimum of 96 inches wide where the access aisle is a minimum of 96 inches wide. Neither

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<sup>1</sup> <http://www.ada.gov/restripe.htm>

of the 2 marked van accessible spaces in Lot 27 has the required 132 inches of width plus a 60-inch-wide access aisle for such a space, or in lieu of the extra wide parking space, a 96-inch-wide space with a 96-inch access aisle. Therefore, the 2 existing van accessible spaces in Lot 27 do not meet the size configuration requirements under the 2010 ADA Standards.

There is another parking area serving the Library situated at the end of Library Drive, which is behind the building on its south side. There are 8 total parking spaces along Library Drive, with 6 of the spaces designated and marked by signs as accessible parking spaces, which far exceeds the 1 accessible space for every 25 spaces required under the standards. However, the parking area does not have any spaces marked and configured as van accessible parking spaces with appropriate sized access aisles and signage in accordance with the 2010 ADA Standards.

The 2010 ADA Standards at 208.3.1 require that parking spaces that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4. There are no parking lots closer to the building than Lot 27 and Library Drive. The accessible spaces provided in Lot 27 and along Library Drive are positioned so that they are the closest spaces to the building in those lots. Therefore, the parking provided complies with the 2010 ADA Standards regarding proximity to an accessible route.

With respect to the configuration of the designated accessible parking spaces in Lot 27 and along Library Drive, OCR concludes that these parking lots are not fully accessible under the 2010 ADA Standards. Specifically, Lot 27 is short by 1 accessible parking space, and the 2 existing van accessible parking spaces including access aisles are improperly sized. In addition, the parking along Library Drive lacks a van accessible parking space. Since there are 6 marked accessible parking spaces, 1 of these must be configured as van accessible.

Based on the foregoing, OCR concludes that the evidence is sufficient to support a finding that the University is failing to provide access to its facilities to persons with mobility impairments in violation of Section 504 and Title II with respect to Allegation 1.

## **Allegation 2**

The Complainant identified Anspach Hall as a facility that lacks accessible parking on the shortest route to the building. He also reported that the building may not be entered without using stairs at entrances near the designated accessible parking.

There are 2 marked accessible entrances on the north side of Anspach Hall with entrances at the northeast and northwest ends of the building. These entrances face Anspach Service Drive, which is a no-outlet drive off S Washington Street. OCR found during its site visit that neither of these entrances require the use of stairs to enter the building.

There is marked accessible parking serving the building along Anspach Service Drive. The total number of parking spaces is 18, with 12 of these marked by signs as accessible parking spaces. The accessible parking available exceeds the minimum number of required spaces by 11 spaces. However, none of these spaces are configured and marked as van accessible parking spaces.

The designated accessible parking spaces along Anspach Service Drive are positioned on the

shortest route possible to the building's accessible entrances and are in compliance with the 2010 ADA Standards. There are no stairs at either of the entrances despite the Complainant's contention that stairs are required to enter the building.

Regarding parking at Anspach Hall, OCR concludes that the evidence is sufficient to support a finding that the parking area is not fully accessible under the 2010 ADA Standards as the lot lacks van accessible parking spaces.

### **Allegation 3**

The Complainant reported that the University allows accessible parking spaces at the northwest entrance to be blocked by people who park vehicles next to or behind the accessible marked spaces. The Complainant reported that this was primarily in reference to 2 parking spaces directly in the middle of the sidewalk/service driveway for the building at the northwest entrance of Anspach Hall, which have since been removed by the University after the complaint was filed.

The University denied that it allowed persons to park in accessible marked parking spaces at Anspach Hall. It asserts that it maintains a rigorous parking management operation through its Parking Services department in conjunction with the University Police Department (University Police). It reported that out of 152 citations issued for the 2017-2018 academic year across the entire campus, 1/3 (over 47 citations) of those were for violations at just one facility - Anspach Hall.

The University acknowledged that it had designated the 2 parking spaces outside of the northwest entrance that sat mid-sidewalk/service driveway to exist as supposedly accessible parking spaces for years. However, a study determined that the spaces were inaccessible and unnecessary. This study occurred after it was brought to the attention of the University's Facilities Management department by University Police that the spaces were problematic, including that they were prone to being blocked by vehicles on the sidewalk/service drive and they did not appear to be logically sited as accessible spaces. After the study, the spaces were removed, as the University determined that its 12 marked accessible spaces along Anspach Service Drive more than met the accessibility standards in terms of number of spaces required for access and their proximity to the building entrances.

OCR notes that the 2010 ADA Accessibility Standards at 502.3.4 require that access aisles for accessible parking spaces are not to be in the path of a vehicular way. In the case of the 2 spaces in the sidewalk/service driveway that were removed by the University, the spaces themselves had been positioned in the middle of a vehicular way. Accordingly, both spaces had been in the central path of an active vehicular way and could not have met the standards for accessible parking for this reason alone, and OCR would have required the University to remove the spaces had they still existed, and instead provide other compliant accessible parking that did not pose a danger to individuals.

Based on the foregoing, OCR finds that the evidence is insufficient to support that the University violated Title II and Section 504 as alleged in Allegation 3.

#### **Allegation 4**

The complaint alleged that the University's Bovee University Center (the Center) lacks an accessible entrance and the elevator serving the building is inaccessible and at times inoperable.

The Center is located on E Preston Drive. There are three floors to the building. The main floor is elevated several feet above street level which requires taking either steps via the main entrance or an elevator via the accessible entrance to access this level. There is a separate designated accessible entrance to the right of the main building entrance facing E Preston Drive. The entrance is marked as the accessible entrance with the words 'ACCESSIBLE ENTRANCE' in white letters on the glass door. There is also a tactile entrance sign bearing the International Symbol of Accessibility mounted at 58 inches above the pavement to the right of the door.

The University reported that it contracts with OTIS Elevator Company™ (OTIS), a firm that manufactures and services elevators, to maintain its elevators on campus. OCR interviewed the University's Associate Vice President for Facilities Management (VP of Facilities). He reported that OTIS performs routine preventative maintenance and repairs and responds to entrapments involving University elevators. He said the entrapment response is a 24/7 agreement, and there is a 60-minute response time required of OTIS. He said that OTIS's area technician is at the University nearly every day for some reason servicing the many elevators on campus. He said that there are also 2 backup technicians in neighboring areas, if necessary. He said that the technician and OTIS respond to calls right away and the University does not have any problems regarding elevators remaining out of service due to the response and service from OTIS.

OCR obtained the service reports related to the preventative maintenance and repairs of the Center's elevator for the time period spanning August 2017 through August 2018. None of the maintenance records reflect that the elevator was left inoperable for any period longer than a day.

Regarding elevator operability, the program accessibility requirements of the Section 504 implementing regulations are found at 34 CFR §§104.21-104.23; comparable sections of the Title II implementing regulations are found at 28 CFR §§35.149-35.151. Both 34 CFR §104.21 and 28 CFR §35.149 provide that no qualified person with a disability shall, because a university's facilities are inaccessible to or unusable by disabled persons, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program of activity of the university.

The Title II regulations, at 28 CFR §35.133(a), require the University to maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. Under 28 CFR §35.133(b), isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited. The regulatory guidance clarifies that allowing malfunctioning equipment to persist beyond a reasonable period of time would violate this part, as would repeated mechanical failures due to improper or inadequate maintenance. The guidance further states that failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate this part.

OCR has determined that the information is insufficient to support a finding that the Center's entrance is inaccessible to individuals with disabilities. There is an accessible entrance to the building that is marked and configured as accessible under the 2010 ADA Accessibility Standards.

With regards to the allegation that the elevator serving the building is inaccessible and at times inoperable, OCR found that the elevator is accessible in accordance with the 2010 ADA Accessibility Standards. OCR also found that regarding program accessibility requirements under Section 504 and Title II, the University maintains a preventative maintenance contract with OTIS which results in active monitoring of the operations of the elevator and prompt repair of any issues identified during the preventative maintenance visits. Records indicate that the elevator is maintained and serviced routinely and that when required, repairs occur promptly so that interference with elevator operation is minimal.

Based on the foregoing, OCR finds that the evidence is insufficient to support that the University violated Title II and Section 504 as alleged.

### **Allegation 5**

The Complainant reported to OCR that he had multiple conversations, mainly in March and April 2018, with a University employed police officer about accessibility issues on campus including problems he had with parking at Anspach Hall. He stated that he complained to the officer that people would block access to designated accessible parking spaces outside the building and that there would be no consequences for this. He said that after he complained about the parking at Anspach Hall, the 2 parking spaces he favored were removed in retaliation by the University. He stated that the police officer threatened him with arrest if he interfered with the removal of the spaces.

The University provided OCR with its Section 504 and Title II non-discrimination policy and grievance procedures for addressing complaints of discrimination based on disability. It reported that these are readily available to the public on its website at the following URL: [https://www.cmich.edu/office\\_president/general\\_counsel/Documents/p03006.pdf](https://www.cmich.edu/office_president/general_counsel/Documents/p03006.pdf). OCR searched the University's website and was able to find the webpage quickly by accessing the 'Nondiscrimination Statement' link at the bottom of the homepage. A review of the policy and procedures shows that they provide notice to students, staff and third parties of the policy and procedure, including where complaints may be filed, application of the procedure to complaints alleging discrimination carried by employees, students or third parties, the adequate, reliable and impartial investigation of complaints, including the opportunity to present witnesses and other evidence, designated reasonable and prompt timeframes for resolution, notice to the parties of the outcome of a complaint, and assurance that steps will be taken to prevent recurrence of harassment and to correct discriminatory effects.

The University reported that it did not receive any formal or informal complaints regarding the accessibility of its facilities from the Complainant during the 2017-2018 academic year. However, it reported that the Complainant in March 2018 did contact its Disability Services office about how persons at Anspach Hall would pull in and block his vehicle when he parked in



the spaces on the sidewalk/service drive, to which Disability Services provided him contact information for Facilities Management and Parking Services.

OCR interviewed police officer (the Officer) whom the Complainant primarily interacted with for its investigation. The Officer recalled that his first encounter with the Complainant occurred in March 2018 at Anspach Hall. He said he was called to the building to respond to a fire alarm and he parked his police vehicle on the sidewalk/service driveway to the building. The Officer told OCR that when he entered the building, the Complainant was standing in the breezeway and told him that he had parked illegally. He said he told the Complainant that he was responding to a fire alarm call at the building. He said when he was leaving the building, the Complainant was still there and challenged him on where he had parked his police vehicle and told him he intended to file a complaint about it.

The Officer reported that he had subsequent encounters with the Complainant over a couple of weeks. The Officer told OCR that he recalled responding to 2 other calls, and he knows another University police officer and a parking enforcement officer also responded to calls involving the Complainant's self-policing of the 2 parking spaces outside the northwest entrance. He said that when he responded to the second call involving the Complainant, he was again standing in the breezeway when he entered. He said the Complainant was angry and it was reported to police that he had been threatening people, including the building's custodian (Custodian). He said he spoke with the Complainant who told him he was upset with people blocking the accessible parking spaces near the building entrance including delivery drivers who would park their vehicles on the sidewalk/service driveway. The Officer said that he told the Complainant it was not his place or responsibility to control the parking and instructed him not to confront people. He said he told him that he was to call the police if there were issues with parking.

The Officer said that for the last call he dealt with on the matter, he responded to Anspach Hall about a report involving the Complainant again raising issues about parking. He said that when he arrived, he did not see the Complainant, but he observed his car parked in one of the 2 marked accessible spaces that he favored on the sidewalk/drive. The Officer said that he noticed that a hangar permit was not displayed in the Complainant's vehicle, so he left his card and wrote the Complainant a ticket. He said it was his intention for the Complainant to come see him so he could talk with him about the issues that continued to persist over the parking. He said the Complainant immediately reported to the police department that day. He said he told the Complainant that he thought they had an understanding, which was that he would not confront people and that he was to call the police if there were problems with parking. He said he also told the Complainant that he was not sure the 2 spaces that he was defending were even legal and technically compliant accessible parking spaces considering the location and arrangement of the spaces and that he was going to have it looked into. He stated that the last time he spoke with the Complainant, when he came into the police department after receiving the parking ticket, he told him that if he witnessed further disorderly conduct, he would arrest him.

The officer then brought the matter to the attention of the University Police Captain (Captain), the Captain checked with the University's Facilities Management department about whether the spaces were suitable accessible parking spaces. He said he did not personally contact any other person or department to inquire about the spaces. The Officer stated that he learned that

Facilities Management determined after a study that the 2 parking spaces were unnecessary, and the spaces were removed.

OCR interviewed the Custodian for its investigation. She stated that the 2 former parking spaces by the northwest entrance of the building were in the middle of a service entrance driveway which also serves as a sidewalk for the building, and the Complainant often took issue with people blocking the spaces. She said that she did not see unauthorized people park in the spaces, but she did see them block the spaces due to the way the spaces were situated. She said the vehicles would not be there for long and gave an example of how food delivery people would often park near or next to the spaces but would leave immediately after making their deliveries.

The Custodian reported that there was a period where the Complainant regularly caused problems regarding the parking spaces during the 2017-2018 academic year. She said that the Complainant and his friend would stand outside and not let anyone park in the spaces when they were there. She said the Complainant would have confrontations with delivery people. The Custodian reported that she witnessed police officers from the University speak with the Complainant when they were called to the building. She said that she observed approximately four interactions between the Officer and another police officer and the Complainant over the parking spaces. She said she never saw the Officer or other police officers threaten to arrest the Complainant.

OCR also interviewed the Director of Engineering and Planning (Director), as part of its investigation. The Director reported that she is involved with making determinations about parking facilities on campus. The Director stated that regarding the 2 parking spaces at issue, either University Police or Parking Services reached out to Engineering and Planning about issues with the accessible parking and a civil project manager on staff investigated the matter. She said they went to Anspach Hall and surveyed the parking serving the building. She said he told her that there was an operational function issue with a space because it was positioned ahead of another space. He noted that if the loading dock was being used, as that entrance to the building is alongside the loading dock, the one space would be blocked when vehicles were in the service drive. She said that he oversaw the matter and determined that the 2 spaces in question could be removed as they had ample accessible parking in the very immediate vicinity. She said one of the University's maintenance shops removed the spaces in response.

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.

The Section 504 regulation, at 34 C.F.R. § 104.61, incorporates by reference the prohibition against retaliation contained in the implementing regulation for Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., at 34 C.F.R. § 100.7(e). That regulation provides that no recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the regulation or because he has made a complaint, testified, assisted, or participated in any manner in an investigation,

proceeding or hearing under the regulation. The Title II implementing regulation contains a similar prohibition against retaliation at 28 C.F.R. § 35.134.

To establish a *prima facie* case of retaliation, that is, one capable of creating an inference that retaliation occurred, OCR determines whether: (1) an individual experienced an adverse action caused by a recipient; and (2) the recipient knew that the individual engaged in a protected activity or believed the individual might engage in a protected activity in the future; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. Protected activity includes exercising a right or privilege secured by the statutes and regulations enforced by OCR, engaging in good faith and objectively reasonable opposition to perceived discrimination, or participating in good faith in an OCR. If one of these elements cannot be met, OCR need not continue through its analysis. If a party can establish a *prima facie* case, the recipient must articulate a facially legitimate, non-retaliatory reason for the materially adverse action. If the recipient articulates such a reason, OCR must determine whether the reasons are a pretext to cover retaliatory motive.

Based on the evidence discussed above, OCR finds that the University has an appropriate policy and procedures in place for addressing complaints of discrimination based on disability in accordance with the Title II regulation, at 28 C.F.R. § 35.107(b) and the Section 504 regulation at 34 C.F.R. § 104.7(b). The evidence shows that the Complainant raised issues about parking but the University did not receive any formal complaints. The University acknowledged its awareness of the issues concerning parking at Anspach Hall raised by the Complainant, and it acted to address them within a period of several weeks.

Regarding retaliation, OCR finds that the Complainant engaged in activity protected by Section 504 and Title II through his direct complaints about parking for mobility impaired individuals at the University's Anspach Hall in early 2018. OCR also finds that the University was aware that the Student engaged in a protected activity as staff members spoke of their interactions with the Student regarding parking at Anspach Hall. In addition, OCR finds that there is evidence that the Complainant was subjected to an adverse action when, subsequent to the protected activity, the University had the 2 parking spaces that he favored over other accessible spaces serving the building removed in April 2018.

Since the elements of a *prima facie* case of retaliation have been established, OCR examined whether the recipient has articulated a legitimate, non-retaliatory justification for its actions that is not a pretext for retaliation. In this instance, the Police Department notified Facilities Management that the 2 parking spaces may not have been particularly well positioned to serve as accessible parking spaces. In response, the University conducted a feasibility review of the accessible parking at Anspach Hall. The University determined that the 2 parking spaces at issue were inaccessible. Primarily, they posed a significant hazard to anyone with a disability who may have happened to use them, as they were, among other things, positioned immediately in the center of the path of vehicles serving the building, including maintenance personnel and contractors, large waste removal vehicles and delivery vehicles. The University determined that the 12 marked accessible parking spaces along Anspach Service Drive, which are in the immediate vicinity of the building, were sufficient to meet the requirements for accessible parking for the facility. Therefore, it took action to eliminate the 2 spaces that did not meet accessibility standards. The evidence demonstrates that while the University's removal of the

parking spaces coincided with the Complainant's complaints regarding the spaces, the removal was justified as the spaces were not, in fact, accessible and failed to provide for the safe ingress and egress of a vehicle for those with physical disabilities. Moreover, the existing accessible parking on Anspach Drive with regard to location and number of spaces (12 spaces) exceeds the requirements set forth in the 2010 ADA Accessibility Standards.

While the Officer confirmed to OCR that he did threaten to arrest the Complainant, he said that he warned the Complainant that he would be arrested if he continued his aggressive actions over the parking spaces at Anspach Hall. The Officer said his comment was a result of his interactions with the Complainant as well as reports to University Police about the Complainant's behavior. The Officer stated that he made this comment prior to Facilities Management's determination that the spaces would be eliminated. The Officer reported that he did not recall any further conversations with the Complainant after this exchange.

Based on the information obtained and summarized above, OCR has determined that the evidence does not support that the University retaliated against the Complainant in violation of Section 504 or Title II, as alleged.

### **Resolution and Conclusion**

OCR has determined through its investigation that there is sufficient evidence to demonstrate that with regard to Allegation #1 and Allegation #2, the Lot 27, Library Drive, and Anspach Drive parking areas are not fully accessible to individuals with mobility impairments in violation of Section 504 and Title II. Regarding Allegations #3, #4 and #5, the evidence is insufficient to support that the University is in violation of Section 504 and Title II.

On March 25, 2020, the University provided OCR with the enclosed Resolution Agreement (Agreement), which, once implemented, will fully address OCR's findings in accordance with Section 504 and Title II. The Agreement requires the University to modify its parking spaces at Parking Lot 27, Library Drive, and Anspach Hall in compliance with the 2010 ADA Standards.

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 June 8, 2020. For questions about implementation of the Agreement, please contact xx xxxxxxxxxxxxxxxx. He will be overseeing the monitoring and can be reached by telephone at (216) xxx-xxxx or by e-mail at xxxxxxxxxxxxxxxx@ed.gov. If you have questions about this letter, please contact me by email at xxxxxxxxxxxxxxxx@ed.gov.

Sincerely,

xxxxxxxxxxxxxxxxxxxxx  
Senior Attorney/Acting Team Leader

Enclosure