



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XV
MICHIGAN
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September 29, 2022

Via e-mail only to: khcruz@umich.edu

Kelly Cruz, Esq.
Associate General Counsel
University of Michigan
5010 Fleming Administration Building
503 Thompson Street
Ann Arbor, Michigan 48109

Re: OCR Docket No. 15-22-2010

Dear Ms. Cruz:

This letter is to notify you of the disposition of the above-referenced complaint filed on XXXXX XXXXX, XXXXX, with the U.S. Department of Education, Office for Civil Rights (OCR), against the University of Michigan (the University) alleging that the University is discriminating against individuals with mobility impairments on the basis of disability. Specifically, the Complainant alleged that the Allen House area of the West Quadrangle dormitory is not readily accessible to and useable by individuals with a mobility impairment because there are no ramps or elevators, and access requires the use of stairs.

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 by recipients of 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 on the basis of disability by public entities. As a recipient of federal financial assistance from the Department of Education and as a public entity, the University is subject to Section 504 and Title II.

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

- whether any qualified individual with a disability is being denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under any University program or activity because University facilities are inaccessible to or unusable by persons with disabilities, in violation of the Section 504 implementing

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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 is failing to provide comparable, convenient, and accessible housing to its students with disabilities at the same cost as to others, in sufficient quantity and variety so that the scope of choice of living accommodations for students with disabilities is, as a whole, comparable to that of nondisabled students, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.45(a).

During its investigation to date, OCR reviewed information provided by the Complainant and the University and conducted an onsite visit to the University. Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. In this case, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate.

Summary of OCR's Investigation

The Complainant XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, XXXXX witnessed a student who uses a wheelchair having difficulty traversing and accessing the West Quad area. Specifically, the Complainant said that there are only stairs and no ramps or elevators in the Allen House area of West Quad. OCR requested an interview with the Complainant, to obtain additional detail, but the Complainant refused.

Portions of West Quad were initially constructed in 1937. The University provided information showing that today, West Quad has 551 rooms, which are divided into 10 different houses. Essentially, houses are sections of West Quad. Allen House is a section of 41 rooms on the second floor, located along the south side of West Quad, facing East Madison Street. The University stated that West Quad was renovated in 2013-2014, in compliance with the 2010 ADA Standards for Accessible Design (2010 ADA Standards). The University asserted that, as a result of the renovations, West Quad is 77 percent accessible by students with mobility impairments, as 424 of the 551 rooms are accessible.¹

The University stated that Allen House is inaccessible due to structural impracticality. The University asserted that it did not make Allen House accessible during the 2013-2014 renovations because it was deemed structurally impracticable to meet the requirements of the 2010 ADA Standards. The University provided OCR a copy of a letter from the architectural firm that designed the 2013-2014 renovation of West Quad. The letter explains that

¹ OCR did not assess whether the rooms designated as accessible are, in fact, accessible, as that was not an allegation made in the complaint.

the southernmost multi-storied wing (Allen-Rumsey) of the existing West Quad hall does not allow for handicap wheelchair accessibility due to reasons associated with its 1937 historic and structural impracticality [because] [t]he existing stairs within the circulation path and the structural floor systems vertically offset from the adjacent building floor levels. The structural design prevents wheelchair accessibility to this location only.

The University explained that the ceiling of the first floor is very high, so that the second floor of West Quad does not exist in those locations and is not connected to the other side of West Quad, as it is on other floors. The University said that, unlike other floors within West Quad, the Allen House corridor dead ends at both ends. The University provided OCR the floor plan for Allen House which shows on the second floor an “X” in the center, which is the area of heightened ceiling from the first floor that disconnects Allen House from other areas. The University explained that this is why Allen House could not be made accessible during the 2013-2014 renovations, even though other areas of West Quad were made accessible.

On August 11, 2022, OCR conducted an onsite inspection of Allen House and relevant portions of West Quad. In walking the floor in Allen House, OCR observed that the floor, in several locations, had a few steps, so that a person in a wheelchair could not traverse the floor. During the onsite, OCR visually inspected the ceilings in the floor below Allen House and verified that the ceilings are higher in two locations. Thus, the University’s defense of structural impracticability in making Allen House accessible was plausible.

The University stated that West Quad is a mixed-gender residence hall that houses around 1,100 undergraduate students and that, in addition to bedrooms, West Quad has communal spaces including study rooms, laundry rooms, a multicultural lounge, multipurpose rooms, a community learning center, group workspaces, a creative suite, and a community kitchen. The University also stated that any student with a mobility impairment who wishes to live within West Quad has access to every room type, every floor, and all communal Space through the availability of ramps or elevators. The University asserted that there are no features or room types unique to Allen House, although there are additional room type options in houses other than Allen House (e.g. triples are available in other houses but not Allen House). The University’s information stated that traversing through Allen House is not required to reach any communal space or other part of West Quad.

The University stated that West Quad is home to one Michigan Learning Community, the Michigan Community Scholars Program, which is located in both Allen House and Chicago House. The University’s description of the Michigan Community Scholars Program is that it is a “self-selected group of students who wish to combine their academic and residential experiences in a close-knit community.” Currently, a student with a mobility impairment who is part of this community would live with other community members in Chicago House, which the University asserted is accessible. In its data response, the University told OCR that it is willing to move the entire community so that no community member resides in Allen House. During the August 11 onsite, University staff informed OCR that their plan is to move the entire learning community to another floor within West Quad. OCR walked the entirety of the proposed floor with University staff; the entire floor was on one level (i.e., no stairs) and was accessible via the elevator.

Applicable Regulatory Standards

The Section 504 regulation states that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any of the recipient's programs or activities. 34 C.F.R. § 104.21. Similarly, the regulation implementing Title II states that no qualified individual with a disability shall, because a public entity's facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. 28 C.F.R. § 35.149.

A threshold question in any accessibility analysis is whether the facility or an element of a facility at issue is an existing facility, an alteration, or new construction. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992.

As noted above, West Quad was initially constructed starting in 1937, but was altered in 2013-2014; Allen House was not altered. The Section 504 regulation at 34 C.F.R. § 104.23(b) states that alterations that affect or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be made in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. When reviewing alterations, OCR uses the standard in effect at the time of the alteration when determining whether the alterations comply with Section 504 and Title II. The 2010 ADA Standards became effective March 15, 2012; thus, they are the applicable standard for the alterations to West Quad.

In contrast, for existing facilities, like Allen House, "program access" is required. An educational institution is 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).

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, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternative accessible sites, 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.

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. 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. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

In addition, the Section 504 regulation at 34 C.F.R. § 104.45(a) states that a recipient that provides housing to its students shall provide comparable, convenient, and accessible housing to students with disabilities at the same cost as to others and that such housing shall be available in sufficient quantity and variety so that students with disabilities have a scope of choices of living accommodations that, as a whole, is comparable to that of students without disabilities. The 2010 ADA Standards state that, generally, housing at a place of education shall comply with the provisions of the 2010 Standards applicable to transient lodging. 28 C.F.R. § 35.151(f). The 2010 ADA Standards at 224 Transient Lodging Guest Rooms, state:

224.1.1 Alterations. Where guest rooms are altered or added, the requirements of 224 shall apply only to the guest rooms being altered or added until the number of guest rooms complies with the minimum number required for new construction.

Advisory 224.1.1 Alterations. In alterations and additions, the minimum required number of accessible guest rooms is based on the total number of guest rooms altered or added instead of the total number of guest rooms provided in a facility. Typically, each alteration of a facility is limited to a particular portion of the facility. When accessible guest rooms are added as a result of subsequent alterations, compliance with 224.5 (Dispersion) is more likely to be achieved if all of the accessible guest rooms are not provided in the same area of the facility.

The minimum number of rooms required to be accessible is based on the total number of rooms provided. For a facility with 501 to 1,000 rooms, three percent of the total number of rooms must be accessible. Finally, the Section 504 regulation at 34 C.F.R. § 104.43(d) states that recipients shall operate their programs and activities in the most integrated setting appropriate.

Analysis

The Complainant alleged that the Allen House area of West Quad is not readily accessible to and useable by individuals with a mobility impairment because there are no ramps or elevators, and access requires the use of stairs. The University admitted that Allen House is not accessible to persons with a mobility impairment, but asserted as a defense that it was structurally impracticable to make Allen House accessible. The letter from the architect describing the issue, and OCR's onsite visit, confirmed that it would be structurally impracticable to render Allen House accessible.

Allen House is existing housing subject to the program access standard. Allen House is part of the University's housing program, and specifically, housing within West Quad. The University provided information showing that it had altered much of West Quad in 2013-2014 to provide program access to its housing program. The University stated that it had made 424 rooms accessible; the 2010 ADA Standards would only require 17 rooms to be accessible, which is three percent of the 551 rooms.

The University provided information showing that Allen House had no unique features, in either its room configurations or its common areas, when compared to the rest of West Quad. Therefore, making other portions of its housing program within West Quad accessible complies

with the Section 504 regulation at 34 C.F.R. § 104.45(a), as the University provides housing to its students with disabilities that is comparable, convenient, and accessible, and at the same cost, as to others. As the University has asserted that 424 of the 551 rooms are accessible, the number of rooms would provide a sufficient quantity, and the variety is the same as that provided to students without disabilities.

However, the University stated that it has a learning community where students are assigned to live in either Chicago House or Allen House. This means that if a student with a mobility impairment was participating in the learning community, that student would not be able to visit other students in the learning community who were living in Allen House, even if the student themselves was living in Chicago House. The University's description of the Michigan Community Scholars Program is that it is a "self-selected groups of students who wish to combine their academic and residential experiences in a close-knit community." As currently the program is located in both Chicago House and the inaccessible Allen House, there is a cause for concern that this program is not in the most integrated setting appropriate. OCR therefore determined that the facts obtained to date support a need for an agreement, and the University requested a voluntary resolution agreement under CPM § 302.

Conclusion

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, 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 concerns that can be addressed through a resolution agreement. In this case, the University expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On September 29, 2022, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address the allegation in this complaint. OCR will monitor the implementation of the Resolution Agreement.

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. 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 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, it 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.

OCR looks forward to receiving the University's first monitoring report by **November 4, 2022**. For questions about implementation of the Agreement, please contact Ms. Kimberly Kilby, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by phone at XXXXX or by e-mail at XXXXX.

Sincerely,

Nathaniel J. McDonald
Supervisory Attorney/Team Leader

Enclosure