

During its investigation to date, OCR reviewed information provided by the Student and the University. Prior to completion of OCR’s investigation, the University expressed interest in resolving the allegation and OCR determined that resolution was appropriate, pursuant to Section 302 of OCR’s Case Processing Manual. The bases for OCR’s determination and the voluntary resolution are explained below.

Facts

The Student XXXXX XXXXX XXXXX. XXXXX alleged that at the start of the XXXXX XXXXX academic year XXXXX was not able to access XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, which was held in the basement of the University’s Clippinger Hall building (the building), because there was no accessible route to the basement. According to the University’s website, the building was originally built in 1967 and has been undergoing various phases of construction and renovation since 2018. The website article about the building says it is the home of the College of Arts and Sciences and is the University’s “central building for science-related activities, housing the departments of Physics and Astronomy, Chemistry and Biochemistry, Geography, and Geological Science.” The article further states, “Because it is home to the sciences, most students attend class in the building for their core curriculum.” The Student explained that the main routes to the basement were the building’s stairs, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX; the building’s elevator; and an outside ramp located away from the building’s main entrance that leads directly to the building’s basement.

XXXXX – PARAGRAPH REMOVED - XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED - XXXXX

The University did not dispute that the elevator was broken during the 2022-2023 school year, but provided OCR with information and documentation demonstrating that, during the course of OCR’s investigation, it repaired the building’s elevator, and that the elevator was working as of November 17, 2022.

University staff told OCR that, during the course of the investigation, sometime between when OCR notified the University of the complaint XXXXX XXXXX XXXXX XXXXX, and December 14, 2022, the University also replaced the ramp described in the Student’s allegation. The University provided OCR with photographs of the new ramp in early January 2023, and later that month submitted more photographs showing additional changes the University had made to the ramp.

The original pictures showed an exterior door to the building on a concrete platform that was raised above an asphalt surface by several inches. A new concrete ramp from the asphalt to the concrete platform was shown, between a brick wall of the building on one side that did not have any handrail and a bare wooden structure creating a handrail on the other side of the ramp. The wooden structure ran along the side of the new concrete ramp and then made a 90-degree turn and ran along the concrete platform where the door was located. The structure was made of

square-edged, unfinished wooden planks attached to each other. It was not clear if/how the wooden structure was affixed to the asphalt surface or the concrete ramp. At the bottom of the ramp was what looked like a lip between the concrete and the asphalt that had possibly been partially patched with asphalt, leaving an uneven edge/lip at which water appeared to have accumulated.

The University then sent photographs showing additional work completed on the ramp. These photographs showed that the University had added wooden boards in the middle and at the bottom of the wooden structure. It appeared the boards added to the bottom of the structure were meant to provide edge protection. The photographs also show that the University added a rounded, bare wooden handrail along the second row of wooden boards on the structure.

Legal Standard and Analysis

The Section 504 regulation, at 34 C.F.R. § 104.21, 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. Similarly, the regulation implementing Title II, at 28 C.F.R. § 35.149, 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.

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 Title II, 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, 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. 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.

For support facilities for a program in an existing facility being viewed in its entirety, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

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).

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. For new construction and alterations as of March 15, 2012, public entities must comply with the 2010 ADA Standards.

The Title II implementing regulation, at 28 C.F.R. § 35.133, also requires public entities 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 by Title II. Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited; however, allowing obstructions or "out of service" equipment to persist beyond a reasonable period of time would violate 28 C.F.R. § 35.133, as would repeated mechanical failures due to improper or inadequate maintenance. Failure of the public entity to ensure that accessible routes are properly maintained and free of obstructions, or failure to arrange prompt repair of inoperable elevators or other equipment intended to provide access would also violate the regulation. See Appendix B to Part 35—Guidance on ADA Regulation on Nondiscrimination on the Basis of Disability in State and Local Government Services Originally Published July 26, 1991.

The Student alleged that the University did not provide her with an accessible route to the basement of the building XXXXX XXXXX XXXXX. The Student specifically asserted that the building's elevator was broken XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX in the building, and that the exterior ramp to a door to the building's basement was not safe.

The University provided OCR with information and documentation supporting that, in the course of this investigation, it took measures to partially resolve the allegation. Specifically, the University provided OCR with documentation demonstrating that the building's elevator had been repaired and was working as of November 17, 2022. However, the information obtained to date raises a compliance concern that the University took months, across two academic years, to fix the elevator in this building that the University's website describes as the University's "home to the sciences" used by most students for core curriculum courses. It also raises a concern that the University asked the Student and possibly other students with disabilities to use a non-ADA-compliant, non-safe exterior entrance different from the building entrance used by other students to access the building while the elevator was broken.

Although the University informed OCR that, during this investigation, it replaced the exterior ramp to the entrance to the building's basement, in addition to this not being an appropriate access solution for persons with disabilities to the programs and activities in the building, the photographs of the new ramp the University provided raised cause for concern that the ramp does not comply with applicable accessibility standards.

Since the new ramp was built in 2022, it must conform to the requirements of the 2010 ADA Standards.

Pursuant to Section 405.5 of the 2010 ADA Standards, the clear width of a ramp run and, where handrails are provided, the clear width between handrails must be 36 inches minimum. It was not clear what the width of the University's new ramp was, including the new rounded handrail.

Section 405.7 of the 2010 ADA Standards requires ramps to have landings at the top and the bottom of each ramp run. Section 405.10 requires that landings subject to wet conditions must be designed to prevent the accumulation of water. Some of the photographs appeared to show accumulated water at the bottom landing. It was not clear whether the landings met the requirements of Section 405.7. It was also unclear if there is sufficient maneuvering clearance at the top of the ramp given that the door swings open into the landing, which would appear to require a person using a wheelchair to pass the door then turn around to open it and enter. See 2010 ADA Standard 404.2.4.

Section 405.9 of the 2010 ADA Standards states that "Edge protection complying with 405.9.1 or 405.9.2 shall be provided on each side of ramp runs and at each side of ramp landings." 405.9.1 states that the floor or ground surface of the ramp run or landing shall extend 12 inches (305 mm) minimum beyond the inside face of a handrail complying with 505, and 405.9.2 states that a curb or barrier shall be provided that prevents the passage of a 4 inch (100 mm) diameter sphere, where any portion of the sphere is within 4 inches (100 mm) of the finish floor or ground surface. The pictures of the ramp indicate that the ramp may not have had adequate edge

protection, but the University sought to address this by adding another set of wooden boards at the bottom of the wooden structure running alongside the ramp.

Section 405.8 of the 2010 ADA Standards requires ramp runs with a rise greater than 6 inches to have handrails complying with 505. According to Section 505.2, where required, handrails must be provided on both sides of ramps. The ramp at issue only has a handrail on one side. Section 505.4 requires the top of gripping surfaces of handrails to be 34 inches minimum and 38 inches maximum vertically above walking surfaces and ramp surfaces, and Section 505.5 requires clearance between handrail gripping surfaces and adjacent surfaces to be 1 1/2 inches minimum. Section 505.6 requires handrail gripping surfaces to be continuous along their length and not be obstructed along their tops or sides. Under Section 505.7.1, handrail gripping surfaces with a circular cross section must have an outside diameter of 1 1/4 inches minimum and 2 inches maximum. It was not clear from the photographs the relevant measurements of the University's new ramp handrails, but the photographs raised concern regarding the squared unfinished wooden boards on the structure above the new rounded handrail and the ability to grip the handrail with the narrow space between the new handrail and the wooden boards behind it. In addition, Section 505.8 requires that handrail gripping surfaces and any surfaces adjacent to them be free of sharp or abrasive elements and have rounded edges. The unfinished wooden handrail does not appear to meet this requirement.

Section 505.10.1 requires ramp handrails to extend horizontally above the landing for 12 inches minimum beyond the top and bottom of ramp runs. Extensions must return to a wall, guard, or the landing surface, or be continuous to the handrail of an adjacent ramp run. The photographs of the new rounded wooden handrail indicate that it extends beyond the bottom of the ramp, although it is not clear for how long, but do not show that it returns to the guard or landing surface.

Finally, Section 303.3 of the 2010 ADA Standards requires that changes in level between 1/4 inch (6.4 mm) high minimum and 1/2 inch (13 mm) high maximum be beveled with a slope not steeper than 1:2. The photographs of the ramp appear to show an uneven asphalt patch between the concrete ramp and the asphalt area around the building that does not meet this requirement.

Voluntary Resolution and Conclusion

Before OCR completed a further review of the ramp, the University asked to voluntarily resolve this complaint pursuant to Section 302 of OCR's Case Processing Manual.

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 March 8, 2023, the University signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the 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 **March 31, 2023**. For questions about this letter or the University's implementation of the Agreement, please contact me by telephone at XXXXX XXXXX XXXXX or by e-mail XXXXX.

Sincerely,

/S/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure