



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1350 EUCLID AVENUE, SUITE 325
CLEVELAND, OH 44115-1812

REGION XV
MICHIGAN
OHIO

March 20, 2023

Via e-mail only to: XXXXX

XXXXX XXXXX XXXXX
Associate General Counsel
Cleveland State University
2121 Euclid Avenue, AC 327
Cleveland, Ohio 44115

Re: OCR Docket No. 15-22-2208

Dear XXXXX XXXXX:

This letter is to notify you of the disposition of the above-referenced complaint received on XXXXX XXXXX, XXXXX, by the U.S. Department of Education, Office for Civil Rights (OCR), against Cleveland State University (the University) alleging that the University's Middough Building (the Building) is inaccessible to individuals with disabilities in that:

- 1) the doors on the second floor of the Building immediately past the elevators are too heavy and do not have enough clear space around the doors; and
- 2) there is no accessible parking for the Building.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability 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 and as a public entity the University is subject to these laws. Therefore, OCR had jurisdiction to investigate this complaint.

Based on the complaint allegations, OCR opened an investigation of the following issue to determine whether the University is discriminating against individuals on the basis of disability: whether qualified individuals with disabilities are being excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any of the University's programs or activities because the University's 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 and the Title II implementing regulation at 28 C.F.R. § 35.149.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

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During its investigation to date, OCR reviewed information provided by the Complainant and the University, interviewed the Complainant, and conducted an onsite visit to the Building on XXXXX XXXXX, XXXXX. Based on the information obtained, OCR determined that a portion of allegation #1 is resolved. Prior to the completion of OCR's investigation, the University asked to voluntarily resolve this case pursuant to Section 302 of OCR's *Case Processing Manual* and signed a resolution agreement to address the compliance concerns OCR identified with respect to the remaining allegations. A summary of OCR's investigation follows.

Background about the Building

The Building was constructed by another entity in 1912, with additions constructed in 1917 and 1923. On December 29, 2010, the University entered into a lease agreement with the private entity that owns the Building to lease the second and fifth floors of the Building. Pursuant to the lease agreement, the University is solely responsible for the condition, operation, repair, improvement, maintenance, and management of the University-occupied premises of the Building. On March 30, 2011, the National Park Service designated the Building a "certified historic structure" for external building design, but not for the internal areas at issue in this complaint.

The University renovated the two floors of the Building it occupies beginning in March 2011 to convert the areas into campus spaces. The University completed the renovations by January 15, 2012. In 2011, the University altered the area containing the doors on the second floor of the Building past the elevator. The alterations were completed by December 2011.

The University stated that on July 1, 2020, the University assumed the management and maintenance of the Building's parking garage. In the fall of 2020, it restriped the entire parking garage. In addition, at an unspecified time after leasing the Building, the University appears to have sectioned off an area of the parking garage for uses other than parking, reducing the number of parking spaces from 144 to 106.

Legal 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.

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).

As noted above, the Building was initially constructed starting in 1912, but the University altered its leased areas in 2011. The Section 504 regulation at 34 C.F.R. § 104.23(b) and, similarly, the implementing regulation for Title II at 28 C.F.R. § 35.151(b) provide that each facility or part of a facility altered by, on behalf of, or for the use of a public recipient in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. When reviewing alterations, OCR uses the standards in effect at the time of the alteration when determining whether the alterations comply with Section 504 and Title II.

New construction or alterations commenced after January 26, 1992, but prior to September 15, 2010, must comply with either the Uniform Federal Accessibility Standards (UFAS) or the 1991 Americans with Disabilities Act (ADA) Standards for Accessible Design (the 1991 ADA Standards). New construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, may comply with the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards), UFAS, or the 1991 ADA Standards. New construction or alterations commenced on or after March 15, 2012, must comply with the 2010 ADA Standards.

Existing buildings leased by a public entity after the effective date of the Title II regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in 28 C.F.R. § 35.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of 28 C.F.R. § 35.151; 28 C.F.R. Part 35, Appendix B.

Regarding parking, the University stated that in the fall of 2020 it completely restriped all the spaces in the Building garage. In addition, at some point after leasing the Building, the University appears to have sectioned off an area of the garage for uses other than parking, reducing the number of parking spaces from 144 to 106. When an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards, and failure to do so would violate the ADA. Thus, the 2010 ADA Standards are applicable with respect to the parking garage.

Pursuant to 28 C.F.R. § 35.151(c)(5)(ii), noncomplying alterations covered by 28 C.F.R. § 35.151(b), such as the Building components at issue in this complaint investigation, that were constructed or altered before March 15, 2012, and that do not comply with UFAS or the 1991 ADA Standards were required to, on or after March 15, 2012, be made accessible in accordance with the 2010 ADA Standards.

In addition, the Section 504 regulation at 34 C.F.R. § 104.22(f) requires recipients to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities. The Title II regulation contains a similar requirement at 28 C.F.R. § 35.163(a).

Facts and Analysis

- **Second-Story Doors**

XXXXX – SENTENCE REMOVED – XXXXX. XXXXX – SENTENCE REMOVED – XXXXX. With respect to allegation #1, the Complainant informed OCR that the Building's second-story doors, just past the elevators, were not accessible, in that the doors were too heavy, and the University had placed garbage and recycling cans beside the doors that were blocking the path of travel to the doors.

On XXXXX XXXXX, XXXXX, OCR conducted an onsite visit of the second-story doors of the Building that were at issue in this complaint. The area leading up to the doors was flat and clear of obstacles on both sides of the doors. The University had moved the garbage and recycling cans to an area that did not obstruct the path of travel to the doors. During a follow-up interview, the Complainant stated the University moved the garbage and recycling receptacles that were blocking the path of travel to the doors shortly after the filing of this complaint and that there were no longer obstacles in the way of the doors.

However, OCR's review of the second-story doors during the onsite visit revealed compliance concerns with the force required to open both doors. Both doors exceeded 5lbf to open from the interior and exterior. The 1991 ADA Standards at 4.13.11 required that the force to open a door be no more than 5 lbf. Additionally, the threshold for the door with the words "CSU ART CAMPUS" in yellow lettering was $\frac{3}{4}$ inches high, exceeding the permissible height at doorway thresholds of $\frac{1}{2}$ inch. (1991 ADA Standards at 4.13.8). These items also do not comply with the 2010 ADA Standards at 404.4.9 or 404.2.5.

- **Parking**

With respect to allegation #2, the Building's parking garage is located within the first floor of the Building. It is a small, single-floor garage. The University identifies this parking garage as "Lot 13" on its parking map. The University manages and maintains the parking garage, and although there are 106 parking spaces total in the lot, only ten of these spaces are reserved for the University and another Building tenant to share. A third tenant in the Building is entitled to the use of the remaining spaces in the parking garage, with the exception of the two parking spaces designated as accessible, which are not reserved for the University or any other Building tenants. There is no public parking in this garage, although after 4:00 p.m. on weekdays and on weekends any person with a University parking permit or Dashpass (explained below) can park in 44 spaces in the garage that are not reserved during these time periods. There is no other University parking within two blocks of this Building, which is in a concentrated urban center.

The University stated that, if someone requests a disability-related parking accommodation, Parking Services will work to accommodate the request in several ways, including but not

limited to issuing parking hang tags for “the most convenient lot.” The University also issues a pass called a “Dashpass” to students/faculty/and or staff with impaired mobility, but according to the University, these are temporary, or “short term.”

The University Parking Services administrator told OCR that anyone from the public with a disability hang tag could park in the accessible parking spaces at any time and the University would not ticket them. However, the University did not provide this information to the public or within the University. Neither the sign outside the only entrance to Lot 13, which included information regarding when it is available for University students with parking passes, nor the online map of University parking on the University’s website, indicated that Lot 13 has any accessible parking. XXXXX – SENTENCE REMOVED – XXXXX. This raises a compliance concern that individuals with mobility impairments may not be aware of the availability of accessible parking for programs in the Building.

In addition, OCR noted concerns regarding the parking spaces’ compliance with the 2010 ADA Standards that apply to the parking garage. Only two of the 106 parking spaces, identified as #32 and #41, were designated accessible. The minimum number of required accessible spaces for a parking facility with between 101-150 parking spaces is five. (2010 ADA Standards at 208.2) Additionally, for every six (or fraction of six) parking spaces required for 208.2, at least one must be van parking, and there were no van accessible parking spaces designated, although space #32 meets the dimensions criteria for van accessibility. (2010 ADA Standards at 208.2.4) However, there were areas where space #32 and the access aisle had slopes exceeding the maximum ratio of rise to run of 1:48. (2010 ADA Standards at 304.2 and 403.3). Finally, the signage did not meet all of the requirements of the 2010 ADA Standards because it was not raised (2010 ADA Standards at 506.6 and 703.7.2.1), it did not have the proper thickness to height ratio (2010 ADA Standards at 703.2.6), and, as noted, there was no van accessible signage (2010 ADA Standards at 506.6).

Dismissal of Portion of Allegation #1, Voluntary Resolution of Remainder of Complaint, and Conclusion

With respect to the portion of allegation #1 that there is not enough clear space around the second-story doors at the Building, pursuant to OCR’s Case Processing Manual (CPM) at Section 110(d), OCR will close or dismiss an allegation if OCR obtains credible information indicating that the allegation has been resolved and there is no systemic allegation. Here, the University moved the garbage and recycle cans, the obstacles at issue that had been in front of the doors, and the area is no longer obstructed. The Complainant confirmed to OCR this area remained unobstructed. Based on this information, OCR has determined that this portion of allegation #1 is resolved and is closing it.

With respect to the remaining allegations, under Section 302 of OCR’s CPM, 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 allegations prior to the conclusion of OCR’s investigation and OCR determined resolution was appropriate. On March 20, 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 May 8, 2023. For questions about implementation of the Agreement, please contact Hanna Klein, who will oversee the monitoring and can be reached by telephone at (216) 522-4973 or by e-mail at Hanna.Klein@ed.gov. If you have questions about this letter, please contact me by telephone at (216) 522-2667 or by e-mail at Brenda.Redmond@ed.gov.

Sincerely,

/S/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure