



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

August 13, 2014

William P. Kelly
Interim Chancellor
The City University of New York
Office of the Chancellor
535 East 80th Street
New York, New York 10075

Re: Case No. 02-14-2075
City University of New York – Hunter College

Dear Dr. Kelly:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR), with respect to the above-referenced complaint filed against City University of New York – Hunter College. The complainant alleged the College discriminates against individuals with disabilities because classrooms, restrooms, the library and the cafeteria in the College's North Building lack Braille signage.

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 at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The College is a recipient of financial assistance from the Department and is a public post-secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The complainant alleged that the College discriminated against individuals with disabilities because classrooms, restrooms, the library and the cafeteria in the College's North Building lack Braille signage.

In its investigation, OCR interviewed the complainant and reviewed information the complainant and the College submitted. OCR also conducted an onsite inspection of the North Building on May 13, 2014.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person 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 program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

OCR determined that the North Building was constructed in 1940. OCR also determined that certain rooms and entrances to rooms in the North Building have not been altered or renovated after 1977. The regulation implementing Section 504, at 34 C.F.R. § 104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities.” Accordingly, the unrenovated rooms and entrances to rooms in the North Building are “existing facilities” under Section 504.¹ The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.²

OCR determined that some of the unrenovated rooms and entrances to rooms in the North Building contain unique programs and activities; these are set forth in Appendix A to the enclosed resolution agreement.³ Accordingly, each program or activity operated in these rooms, when viewed in their entirety, must be readily accessible to individuals with disabilities. The regulation does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. 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.

¹ These areas are also existing facilities under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

² The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

³ Although the complainant alleged that there is a cafeteria in the North building that lacks Braille signage, OCR determined that there are no facilities or rooms designated as, or serving the function of, a cafeteria.

The College advised OCR that it does not have a formal procedure in place to provide program accessibility to students with visual impairments to existing facilities within the North Building that contain unique programs.⁴ Accordingly, OCR determined that the College must develop an alternate plan for providing individuals with visual impairments with access to the programs located on the 3rd through the 16th floors of the North Building (set forth in Appendix A to the enclosed resolution agreement), unless it intends to make structural changes.

OCR determined that from 1992 to 2012, the College renovated certain rooms and doorways in the North Building. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977 as “new construction.” Accordingly, OCR determined that rooms or entrances to rooms constructed or altered after 1977, are “new construction,” as defined by Section 504.⁵ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁶ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all buildings constructed or alterations to existing facilities made after January 18, 1991, must be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).⁷

OCR determined that classrooms and restrooms in the North Building that were substantially altered after 1977 (under Section 504) or 1992 (under the ADA), respectively, are “new construction.” OCR determined that some of these rooms lack appropriate Braille signage; therefore, the College must install such signage in accordance with the applicable accessibility standards. These rooms are set forth in Appendix B to the enclosed resolution agreement.

⁴ The College informed OCR that a student with a visual impairment who needs direction to a room or program within the North Building may ask for assistance from security guards in the lobby, the Department of Facilities staff, or the College’s Section 504 Coordinator. The College stations security guards and staff during all business hours to summon program service providers to the first floor when necessary to assist a person with a visual impairment. The College stated that security guards at the front desk also direct individuals with disabilities seeking access to programs and services located in the North Building to the program or activity’s representative or to the facilities staff or to the Section 504 Coordinator, as necessary. However, the College does not publish this information to students or visitors.

⁵ These areas are also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. §35.151.

⁶ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. §35.151.

⁷ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. The College informed OCR that it adhered to ADAAG. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design.

On August 12, 2014, the College agreed to implement the enclosed resolution agreement, which addresses the compliance concerns identified in this letter. OCR will monitor the implementation of the resolution agreement. If the College fails to implement the terms of the resolution agreement, OCR will resume its investigation of the complaint.

This letter should not be interpreted to address the College'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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College 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 complainant 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, it 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.

If you have any questions about OCR's determination, please contact Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov, or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.