



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
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December 22, 2015

IN RESPONSE, PLEASE REFER TO: 03152020

Michael A. Driscoll, Ph.D.
President
Indiana University of Pennsylvania
Sutton Hall, Room 201
1011 South Drive
Indiana, PA 15705

Dear Dr. Driscoll:

On November 19, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), issued a letter findings for Indiana University of Pennsylvania (the University) in violation of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, with respect to the above-referenced complaint. A copy of the letter is enclosed. XXXX (the Complainant) alleged that the University discriminated against him on the basis of disability and retaliated against him for XXXXXXXX. Specifically, the Complainant alleged that the University discriminated on the basis of disability as follows:

1. These elements are not accessible to individuals with mobility impairments:
 - a. the chair lift in the Hadley Union Building's skywalk which cannot be operated independently;
 - b. the Hadley Union Building's stages;
 - c. the accessible route along Grant Street which lacks accessible curb cuts;
 - d. the entrance to Waller Hall;
 - e. seating in Waller Hall;
 - f. signage for the accessible entrance at Davis Hall;
 - g. the route from the accessible parking spaces to the entrance of the Student Co-Operative Association's (the Co-op) College Lodge;
 - h. placement of the accessible parking spaces which are not the closest parking spaces to accessible entrances at the following facilities:
 - i. Eicher Hall;
 - ii. Wyandt Hall (rear lot);
 - iii. Elkin Hall (rear lot);
 - iv. Sutton Hall;
 - v. Zink Hall;
 - vi. Pierce Hall;

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

- vii. Davis Hall; and
- viii. The Cogeneration Plant facility.

2. Accessible elements are periodically blocked making them inaccessible to individuals with mobility impairments, including accessible routes, ramps, and parking.
3. Failing to timely and adequately clear accessible parking and accessible routes of snow.
4. Failing to enforce parking in designated accessible parking spaces.
5. Failing to XXXXXXXXXXXXXXXXXXXXXXXX.
6. Failing to respond to the Complainant's XXXXXXXXX complaint about accessible parking spaces being blocked.

The Complainant also alleged that the University retaliated against him because of his complaints of disability discrimination by:

7. Failing to respond to the Complainant's XXXXXXXXX complaint about accessible parking spaces being blocked;
8. XX
9. Not providing a timely response to the Complainant's XX.

OCR enforces:

- Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- Title II of the Americans with Disabilities Act of 1990 (the ADA), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities.

Section 504 and the ADA also prohibit retaliation. As a recipient of Federal financial assistance from the Department and a public entity, the University is subject to these laws.

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Title II's implementing regulation contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids,

benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv). Pursuant to Section 504, recipients must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford persons with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.4(b)(2).

The Section 504 implementing regulation at 34 C.F.R. § 104.4(b)(1)(v), provides that a recipient may not aid or perpetuate discrimination against a qualified individual with a disability by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program or activity. The Title II regulations, which apply to public entities, contain a similar requirement at 28 C.F.R. §35.130(b)(i)(v). Under these provisions, if a recipient provides significant assistance to an outside entity, and the entity is shown to have discriminated against students on the basis of disability, the recipient must take steps to obtain compliance from the organization or terminate its assistance.

The Section 504 and Title II regulations also 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. 34 C.F.R. § 104.21; 28 C.F.R. § 35.149. 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 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 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 it 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, such as restrooms, telephones, water fountains, and parking spaces, 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). 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 Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. However, the regulation provides, at 34 C.F.R. § 104.23(c), that departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

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.

In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

The Title II regulation, at 28 C.F.R. § 35.150(a)(2) and (3), provides that, with respect to existing facilities, a public entity is not required to take any action that would threaten or destroy the historic significance of an historic property. Nor is it required to take action that it can demonstrate would result in a fundamental alteration in the nature of a service, program or activity or would result in undue financial and administration burdens. In such cases, however, alternative measures to achieve program accessibility must be undertaken. See Title II Technical Assistance Manual (DOJ); 2010 ADA Standards at Section 106 (definitions).

With regard to parking, DOJ 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.

OCR's November 19, 2015 findings that the University was in violation of Section 504, the ADA and their implementing regulations with respect to several allegations at issue in the complaint are incorporated by reference in this letter. OCR's investigation revealed several compliance concerns which the University has agreed to remediate.

On December 18, 2015, OCR received a signed copy of the enclosed Agreement to Resolve (Agreement) from the University. Under the Agreement, the University agreed to take specific actions.

The Agreement is designed, when fully implemented, to resolve this complaint and remedy the University's Section 504 and ADA violations. OCR will monitor implementation of the Agreement until the University has fulfilled the terms of the Agreement and is in compliance with Section 504, the ADA and their implementing regulations at issue in this case.

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, we 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.

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 Complainant may file another complaint alleging such treatment.

OCR is committed to a high-quality resolution of every case. If you have questions or concerns about OCR's finding, you may contact Mr. Josh Galiotto at 215-656-8587 or joshua.galiotto@ed.gov.

Thank you for your cooperation with this matter.

Sincerely,

/s/

Judith O'Boyle
Acting Team Leader
Philadelphia Office

Enclosures

cc: Suzanne Williamson, Esq. (via email)