



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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April 29, 2016

Dr. Michael A. McRobbie
President
Indiana University
Bryan Hall 200
107 S. Indiana Avenue
Bloomington, IN 47405

OCR Case No. 05-16-2032

Dear Dr. McRobbie:

The U.S. Department of Education's Office for Civil Rights (OCR) has completed its investigation of the above-referenced complaint against Indiana University (University). The Complainant alleges the University's Mathers Museum of World Cultures (Museum) is not accessible to individuals with disabilities in that it does not have accessible parking, does not have an accessible route from the parking to the Museum entrance, does not have an accessible entrance, does not have appropriate exterior signage, does not have accessible drinking fountains, and does not have accessible restrooms.

OCR is responsible for enforcing 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 is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, 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 a public entity, the University is subject to the provisions of Section 504 and Title II with respect to this complaint.

OCR investigated this complaint by interviewing the Complainant, reviewing documents submitted by the University, and conducting an onsite visit to the University.

University Policies

The University's Non-Discrimination Policy prohibits discrimination on the basis of disability and can be found online.¹ The University has procedures for students, faculty, staff, and visitors to campus to file a complaint of discrimination or harassment, which also can be found online.²

¹ <http://trustees.iu.edu/resources/non-discrimination-policy.shtml>;
<http://policies.iu.edu/policies/categories/administration-operations/equal-opportunity/Equal-Opportunity-Affirmative-Action.shtml>.

Applicable legal standards

Accessibility, general:

The regulation implementing Section 504, at 34 C.F.R. § 104.21, states that no qualified person with a disability shall, because a recipient's facilities are inaccessible to or unusable by persons with a disability, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which the regulation applies. 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.

Accessibility, existing facilities:

Under Section 504, an "existing facility" is a building, or part thereof, where construction was commenced on or before June 2, 1977. The Section 504 regulation, at 34 C.F.R. § 104.22(b), requires institutions to operate programs and activities offered in "existing facilities" that, when viewed in their entirety, are readily accessible to persons with disabilities.

Under Title II, an "existing facility" is a building, or part thereof, where construction was commenced on or before January 25, 1992. The Title II regulation, at 28 C.F.R. § 35.120, requires public entities to operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.

In general, an "existing facility" may comply with the "program access" requirement through the redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other method that results in making each of its programs, services, or activities accessible to persons with disabilities. The institution is not required to make structural changes to existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for providing program access, the institution or public entity shall give priority to those methods that offer programs, services and activities to disabled persons in the most integrated setting appropriate.

Accessibility, new construction:

Under Section 504, any facility or part of a facility for which construction commenced on or after June 3, 1977 is considered "new construction." The Section 504 regulation, at 34 C.F.R. § 104.23, requires each such facility or part of a facility constructed by, on behalf of, or for the use of an institution to be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Any portion of an existing facility that was altered on or after June 3, 1977 is an "alteration." Under Section 504, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility shall, to the

² <http://www.indiana.edu/~affirm/pdf/ComplaintProcedures.pdf>.

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.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the *American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the *Uniform Federal Accessibility Standards* (UFAS) for facilities constructed or altered on or after January 18, 1991.

Under Title II, any facility or part of a facility for which construction commenced on or after January 26, 1992 is considered “new construction.” The Title II regulation, at 28 C.F.R. § 35.151, requires each facility or part of a facility constructed by, on behalf of, or for the use of a public entity to be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Any portion of an existing facility that was altered on or after January 26, 1992 is an “alteration.” Under Title II, each facility or part of a facility which is altered by, on behalf of, or for the use of a 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 manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The Title II regulation, at 28 C.F.R. § 35.151(c) and the corresponding Appendix, state that new construction and alterations that commenced on or after July 26, 1992 and prior to September 15, 2010 must comply with either the UFAS or the *1991 ADA Standards for Accessible Design* (1991 Standards). In September 2010, the regulations implementing Title II were amended and new accessibility guidelines were adopted. The *2010 ADA Standards for Accessible Design* (2010 Standards) apply to physical construction or alterations that commence on or after March 15, 2012.³ Facilities constructed or altered on or after September 15, 2010 and before March 15, 2012 comply with Title II if they meet the 1991 Standards, UFAS, or the 2010 Standards. OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-76 (March 14, 2012) allows use of the ADA Standards to meet the compliance requirements under Section 504.

Notice, existing facilities:

For “existing facilities,” the implementing regulation of Section 504, at 34 C.F.R. § 104.22(f), provides that “the recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.” If a recipient utilizes the relocation option of program accessibility, it must provide reasonable notice to students, parents and others who may have a disability and require relocation of programs, activities or services.

³ 28 C.F.R. § 35.151(c)(3).

Maintenance of Accessible Facilities:

A public entity must 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. This requirement does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. This standard is codified in the regulation implementing Title II, at 28 C.F.R. § 35.133, and is also generally applicable to recipients of Federal financial assistance under Section 504.⁴

Factual Summary

The Complainant alleges the Museum is not accessible for individuals with disabilities, particularly individuals that rely on a wheelchair for assistance with mobility. The Complainant alleges the Museum is not compliant with accessibility requirements with respect to its parking, route from the parking to the Museum, entrance, exterior signage, drinking fountain, and restrooms.

The Museum was built between 1981 and 1983. When it was built, it connected two existing structures: the Glenn Black Lab (Lab) and a fraternal residence that had been converted to administrative offices.

The Museum states that it “offers research and training opportunities for [University] students, educational support and services for [University] faculty and elementary/secondary school teachers, and family friendly exhibits and programs.” The Lab is connected to the Museum and is a “university-centered research laboratory, museum, library and meeting place for the discovery, exhibition and celebration of Indiana’s rich cultural and archaeological heritage.”⁵

The Museum is open to the public Tuesday through Friday from 9am-4:30pm, and Saturday and Sunday from 1pm-4:30pm. The Lab is open to the public Monday through Friday from 9am-4:30pm, and Saturday and Sunday from 1pm-4:30pm. Admission to both the Museum and the Lab is free. The public space in both the Museum and the Lab is located on the second level. The first/lower level of the Museum is not generally open to the public and contains storage. The administrative offices located in the converted fraternal residence are not intended to have public access.

Although the number of visitors to the Museum fluctuates based on the season, whether school is in session, and during special events, the Museum reported having 3,108 visitors in March 2015 (with one week having 0 visitors due to spring break) and 6,353 visitors in October 2015. The Museum does not track the number of visitors that are students or the number of visitors that have a disability. The Museum staff stated that they try to accommodate any Museum visitors

⁴ The regulation implementing Title II, at 28 C.F.R. §§ 35.149-52, requires public entities to offer accessible facilities. The regulation implementing Section 504, at 34 C.F.R. §§ 104.21-23, requires recipients of Federal financial assistance to offer accessible facilities.

⁵ <https://gbl.indiana.edu>.

that require assistance due to a disability. The Museum provides a wheelchair for visitors to use while at the Museum.

Museum Construction:

Construction of the Museum commenced in 1980 or 1981 and was completed in 1983. The Museum was constructed immediately adjacent to the already existing Lab. The southern exterior wall of the Lab became the northern interior wall of the Museum. Construction on the Lab commenced approximately 1969. An administrative building that was constructed in 1932 also is connected to the Museum.⁶

Parking:

The Museum's parking lot was constructed around 1981. The parking lot included five permit-only parking spaces for staff members. Five additional general visitor parking spaces were added in approximately 2007. None of the parking spaces are accessible. The City of Bloomington provides two "accessible" street parking spaces near the primary entrance to the Lab. The Museum directs individuals with disabilities to use the City's designated accessible parking spaces.⁷

Museum Entrance:

The publicly accessible area of the Museum has two main entrances. These entrances provide access to the second level of the Museum and are unlocked during the Museum's hours of operation. The University asserts that these entrances have not been altered since the Museum's construction. Both Museum entrances require a visitor to climb stairs. There is a curb (without a curb cutout or ramp) separating the Museum's parking lot/driveway and the sidewalk that leads to the Museum's west entrance, which is the closest entrance to the Museum's parking lot. The Museum's west entrance has sixteen stairs.

There also is a publicly accessible entrance on the south side of the building, between the Museum and the administrative building. This entrance provides access to the lower level, near the freight elevator. According to the University, this entrance is open and unlocked during the Museum's hours of operation, but is rarely used. The freight elevator is connected to both the Museum and the administrative building and provides access to all levels of the Museum and the administrative building. To access this entrance, an individual has to climb stairs.

The Museum has another entry point via the loading dock. This entrance is locked and typically used for receiving materials for exhibits and for catering purposes. An individual is required to climb five steps to reach a platform in front of a garage door. The garage door is elevated above ground to allow for large trucks to back in and unload.

⁶ This building initially functioned as a fraternal residence before being converted to an administrative building.

⁷ This information is provided to Museum visitors via written materials produced by the Museum, the Museum's website, and on a voice recording at the Museum's main telephone number.

Route:

The Museum does not have accessible parking spaces in its parking lot and therefore does not have an accessible route from its parking spaces to the Museum.

Exterior Signage

The Museum has signage on one of the Museum's non-accessible entrances informing an individual of the location of the accessible entrance. This signage is not visible from the sidewalk or walkway. The other entrances do not have signage regarding accessibility.

Drinking Fountain:

The University stated that the drinking fountain has been replaced since the Museum was built; although the University was not certain the exact date the drinking fountain was replaced, the University believed the fountain was replaced five or six years prior to the onsite inspection (likely in 2009 or 2010). The drinking fountain is located in a recessed area between the men's restroom and the women's restroom. The recessed area is approximately 30 inches wide and 14 inches deep. The drinking fountain is wall mounted. The spout is located at the front of the unit at a height higher than 36 inches from the floor.

Restrooms:

The Museum has one men's restroom and one women's restroom located in a wide hallway in the Museum. The University asserts that the restrooms have not been remodeled or updated since construction of the Museum was completed in 1983.

Both the men's and women's restroom entrance doors are inside an alcove and require an individual to make a 90 degree turn from the hallway into the alcove, followed by a 90 degree turn into the doorway entrance, with another 90 degree turn into the restroom. Both the men's and women's restroom doors have an opening of greater than 32 inches. The men's restroom alcove is approximately 3 feet 7 inches by 4 feet 4 inches on the exterior of the restroom entrance door. The area extends 1 foot from one side of the door, but does not extend 1 foot from the other side of the door. The women's restroom alcove is approximately 3 feet 11 inches by 4 feet 1 inch on the exterior of the restroom entrance door. The area does not extend 1 foot on either side of the door. Neither restroom has five feet of level floor space on the inside of the restroom.

Neither the men's or women's restroom has clear floor space of 5 feet by 5 feet.

Both the men's and women's restrooms have a stall that is 3 feet wide by at least 4 feet 8 inches deep, with a 32 inch door that swings out, and handrails that are 1½ inch in diameter with 1½ inch clearance between the bar and wall. Both men's and women's restrooms have toilet seats at approximately 20 inches from the floor. The men's restroom includes a wall mounted urinal with an opening 19 inches from the floor.

The hot water pipes under the sinks in the men's and women's restroom are not covered or insulated.

The mirror in the women's restroom is 40 inches from the floor to the bottom of the mirror. A mirror in the men's restroom is floor length and extends to approximately one foot above the floor. Neither restroom provides shelves.

In the women's restroom, the paper towel dispenser, the soap dispenser, and the feminine products dispenser are more than 40 inches from the floor to the operating mechanism. In the men's restroom, the paper towel dispenser is more than 40 inches from the floor to the operating mechanism. The higher mounted sink does not have a working soap dispenser.

Analysis

The Museum is considered "new construction" under Section 504 and an "existing facility" under Title II. As such, to comply with Section 504, the facility and any portion of the facility that had not been altered prior to January 18, 1991 must, at a minimum, comply with ANSI. Under Title II, the service, program, or activity, when viewed in its entirety, must be readily accessible to and usable by individuals with disabilities.

Parking – Violation

The Museum's parking lot is considered "new construction" under both Section 504 and Title II because five additional parking spaces were added in 2007. Therefore, the UFAS and the 1991 Standards apply. Under 1991 Standards § 4.1.2(5), the Museum is required to have a minimum of one (1) "van accessible" parking space because it has a total of 10 parking spaces for employees and visitors. The Museum provides no accessible parking spaces and instructs visitors to use the City-provided accessible street parking.⁸

Route from parking to the Museum – Violation

Because the Museum's parking spaces are not in compliance with the applicable regulation in that the Museum does not provide accessible parking in its parking lot, the Museum's route from the Museum's parking spaces to the Museum does not comply with the applicable regulation because it does not exist.

Museum Entrance – Violation

According to the University, the Museum entrances have not been altered since the Museum's construction in 1981-83. Therefore, OCR will apply ANSI standards. ANSI 5.2 requires one primary entrance to each building to be usable by a wheelchair. Although the Museum and the Lab are connected and share a wall, the Museum and Lab are two separate buildings that were

⁸ OCR notes that the City-provided parking spaces are not compliant with ANSI, UFAS, the 1991 Standards, or the 2010 Standards.

constructed at separate times and serve separate functions. During the onsite visit, the Museum staff referred to the three different structures as separate buildings.

The Museum has two primary entrances, as well as an entrance between the Museum and the administrative building. None of these entrances are accessible because they all require climbing of stairs, without a ramp or lift. Therefore, because the Museum does not have an accessible entrance, it does not comply with ANSI.

Exterior Signage – No Violation

Although the Museum's entrances do not have exterior signage regarding accessibility that is visible from the sidewalk, ANSI has limited requirements regarding signage and does not specifically address exterior signage. Therefore, OCR does not find a violation of ANSI related to exterior signage.

Drinking Fountain – Violation

Although the University was not certain of the date that the Museum's drinking fountain was replaced, the University acknowledges that the drinking fountain is not accessible. The drinking fountain was replaced after 1992 and likely before September 2010. Accordingly, OCR considers whether the drinking fountain is in compliance with UFAS and/or the 1991 Standards. Both UFAS and the 1991 Standards require that the spout height of a drinking fountain shall be no higher than 36 inches, measured from the floor or ground surface to the spout outlet. The spout outlet height of the Museum's drinking fountain is over 36 inches high and therefore not compliant with Section 4.15.2 of the 1991 Standards/UFAS.

Restrooms – Violation

The Museum has one men's restroom and one women's restroom located in a wide hallway in the Museum. The University asserts that the restrooms have not been remodeled or updated since construction of the Museum was completed in 1983. Therefore, OCR will apply ANSI standards.

ANSI 5.6 addresses "toilet rooms." ANSI 5.6 states that an "appropriate number" of toilet rooms should be provided, based on the nature and use of a specific building or facility, that are accessible to, and usable by, the physically handicapped. ANSI 5.6.1 requires toilet rooms to have space to allow traffic of individuals in wheelchairs, in accordance with 3.1, 3.2, and 3.3, which identify wheelchair specification and space requirements for wheelchair functioning. ANSI 3.1 provides the standard wheelchairs measure 42 inches in length and 25 inches in width when open. The height from a wheelchair seat from the floor is 19½ inches, from the armrest to the floor is 29 inches, and from the pusher handles to the floor is 36 inches. ANSI 3.2 identifies wheelchair turning radius as 18 inches from wheel to wheel and 31½ inches from front structure to rear structure. To turn 180 and 360 degrees requires 60 inches by 60 inches.⁹ ANSI 3.3

⁹ However, a turning space that is longer than 60 inches may not need to be 60 inches wide. A corridor with two open ends would need a minimum of 54 inches between the walls to allow for a 360 degree turn.

identifies the average unilateral reach at 60 inches, the average horizontal working reach at 30.8 inches, the average bilateral horizontal reach at 64.5 inches, and the average diagonal reach at 48 inches.

Both the men's and women's restroom entrance doors are located inside an alcove, with a door that swings out into the alcove. To enter the restroom, an individual must make a 90 degree turn from the hallway into the alcove, followed by a 90 degree turn into the doorway entrance, with another 90 degree turn into the restroom. The men's restroom alcove is approximately 3 feet 7 inches by 4 feet 4 inches on the exterior of the restroom entrance door. The women's restroom alcove is approximately 3 feet 11 inches by 4 feet 1 inch on the exterior of the restroom entrance door. The doorway entrances do not comply with ANSI 3.2, as they do not provide space for an individual to make a 180 degree turn.

Neither the men's or women's restroom has a space that is 60 inches by 60 inches of clear floor / maneuvering space to allow for an individual in a wheelchair to make a 180 or 360 degree turn. In addition, the restroom entrance doorways are not in compliance with ANSI 5.3, which addresses doors and doorways accessibility. Presumably, for the toilet rooms to be accessible to, and usable by, the physically handicapped, as required by ANSI 5.6, the doorways would also need to be accessible, which as explained above, do not provide sufficient space for an individual in a wheelchair to make a 180 degree turn.

ANSI 5.3.1 requires doors to have a clear opening of no less than 32 inches when open and to be operable by a single effort. Both the men's and women's restroom have an opening greater than 32 inches.

ANSI 5.3.2 requires the floor on the inside and outside of each doorway to be level for a distance of 5 feet from the door in the direction the door swings and to extend one foot beyond each side of the door. The restroom doorways do not comply with ANSI 5.3.2. Neither restroom has five feet of level floor space from the door on either side. The area outside the men's room doorway extends 1 foot from one side of the door, but does not extend 1 foot from the other side of the door. The area outside the women's restroom doorway does not extend 1 foot from either side of the door.

ANSI 5.6.2 requires each toilet room to have at least one stall that is 3 feet wide, 4 feet 8 inches (preferably 5 feet) deep; a 32 inch door that swings out; handrails on each side that are 33 inches high, parallel to the floor, 1½ inch in outer diameter with 1½ inch clearances between rail and wall, that are fastened securely at the ends and center; and a water closet with the seat 20 inches from the floor. Both the men's and women's restrooms have a stall that complies with ANSI 5.6.2.

ANSI 5.6.3 also requires that drain pipes and hot water pipes under a lavatory be covered or insulated. The hot water pipes under the sinks in the men's and women's restroom are not covered or insulated.

ANSI 5.6.4 requires some mirrors and shelves to be provided above lavatories at a height as low as possible, and no higher than 40 inches above the floor, measured from the top of the shelf and the bottom of the mirror. Neither restroom provides shelves. Both restrooms include a mirror that is no higher than 40 inches above the floor when measured to the bottom of the mirror, in compliance with ANSI 5.6.4.

ANSI 5.6.5 requires toilet rooms for men to have wall mounted urinals with the opening of the basin 19 inches from the floor. The men's room complies with ANSI 5.6.5 and includes a wall mounted urinal with an opening 19 inches from the floor.

ANSI 5.6.6 states that toilet rooms shall have an appropriate number of towel racks, towel dispensers, and other dispensers and disposal units mounted no higher than 40 inches from the floor. In the women's restroom, the paper towel dispenser, the soap dispenser, and the feminine products dispenser are more than 40 inches from the floor to the operating mechanism. In the men's restroom, the paper towel dispenser is more than 40 inches from the floor to the operating mechanism. The higher mounted sink does not have a working soap dispenser. The height of the towel dispensers and other dispensers does not comply with ANSI 5.6.6.

Conclusion

Based on the information provided by the Complainant, the University, and gathered during OCR's onsite visit, OCR finds that the Museum's parking, entrance, route from the parking to the entrance, drinking fountain, and men's and women's restroom are not readily accessible to and usable by persons with disabilities. In developing the proposed agreement, OCR has ensured that it is aligned with the information obtained to date, and is consistent with the applicable regulations and legal standards.

This concludes OCR's investigation of the complaint and should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

The 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.

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.

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 privacy.

The Complainant may file a private suit in Federal court, whether or not OCR finds a violation.

OCR would like to thank the University, particularly Ms. Kip Drew, for the cooperation and courtesy extended to OCR during our investigation. If you have any questions, please contact Ms. Melissa Katt, Attorney, at 312-730-1617 or melissa.katt@ed.gov.

Sincerely,

Dawn R. Matthias
Team Leader

CC: Kipley Drew, Esq.