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November 18, 2016

President Michael Crow  
Arizona State University  
Office of the President  
Mail Code 7705  
PO Box 877705  
Tempe, AZ 85287-7705

Re: Arizona State University  
Case Number: 08-16-2198

Dear President Crow:

We are notifying you of our decision in this case. The Complainant alleged that the University denies students with disabilities access to programs and activities by (1) failing to provide accessible laboratory facilities at the Physical Sciences “E” wing (PSE), Physical Sciences “H” wing (PSH), and Life Sciences “E” wing (LSE) on the Main Campus; (2) failing to provide accessible ramps along routes to the accessible entrances to the Classroom Laboratory/Computer Classroom (CLCC) building at the West Campus; (3) failing to provide classroom doors that are within allowable opening force requirements in the CLCC; and (4) failing to maintain an accessible feature (power-assisted doors at restrooms on the third floor of the CLCC). The complainant also alleged the University does not maintain a fire evacuation plan for students with mobility disabilities at the CLCC building.

We conducted our investigation under the authority of Section 504 and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the Department, and Title II and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability in programs or activities of a public entity. As a public entity that receives Federal financial assistance, the University is subject to these legal requirements.

We investigated whether the University discriminates against individuals with disabilities by not ensuring a barrier-free environment in newly constructed or altered elements in violation of Section 504 and Title II. We also investigated whether the University discriminates against individuals with disabilities by not maintaining a fire evacuation plan at the CLCC building for students with mobility disabilities.

### ***Physical Accessibility***

#### Facts

The CLCC building on the University’s west campus was constructed in two phases. Construction began on Phase I on or about October 1, 1989 and Phase II started on or about October 23, 2002. The University stated that it used the 1991 ADA Standards for Accessible Design (1991 ADA Standards) as its accessibility standard when constructing Phase II of the CLCC. The University noted that Phase I was constructed prior to the 1991 ADA Standards.

During an OCR site visit conducted on September 27, 2016, OCR assessed the ramps along the designated accessible routes leading to the accessible entrances of the CLCC. Additionally, OCR checked the opening force of interior and exterior classroom, laboratory classroom and restroom doors located in the CLCC.

Regarding the ramps on the designated accessible routes, OCR found that handrails at portions of the series of ramps in the southeast quadrant of the building extend 6 to 9 inches beyond the top and bottom of the ramps rather than the required minimum of 12 inches.

Regarding the opening force of classroom and laboratory classroom doors in the CLCC, which were constructed in 1989 and 2002; OCR found that each classroom and laboratory classroom door exceeded the maximum amount of force of 5 pounds, averaging between 6 to 11 pounds of force for each. With the exception of the doors at two interior laboratory classrooms constructed in 2002, we found that the doors assessed were labeled as fire doors or were exterior doors which are excepted from the 5 pound force requirement. With respect to restroom doors in the CLCC, we found that all restroom doors were equipped with an automatic door opener. All door openers were operable with the exception of one at a women's restroom on the third floor.<sup>1</sup>

Construction began on the LSE building on the University's main campus in 1990, the PSE was started in 1980 and construction of the PSH began in 1988.

During an OCR site visit conducted on September 28, 2016, OCR assessed the laboratory classrooms used by the Complainant in the LSE, PSE and PSH. We found that in the PSE, the signs designating the room numbers, which appeared original to the building, were above the door rather than on the wall and did not have raised characters. In the PSH, the permanent room signage was variously located over the door or was located on the wall but had no raised characters and, in some instances, did not include the room number. In the LSE, the permanent room signage was located on the wall but was on the hinge side of the door rather than the latch side of the door. In one of the laboratory classrooms in the PSE, we found a wall-mounted shelf (an alteration) that protruded 12 inches into the accessible route with a leading edge 59 inches above the floor which was, therefore, a protruding object and not detectable by blind individuals who use a cane for way-finding.

### Analysis and Conclusion

The program accessibility and architectural accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§ 104.21 – 104.23. Comparable sections of the Title II implementing regulation are found at 28 C.F.R. §§ 35.149 – 35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because a University's facilities are inaccessible to or unusable by disabled individuals, be 1) excluded from participation in, or denied the benefits of services, programs or activities, or 2) otherwise be subjected to discrimination by the University.

The regulations implementing Section 504 and Title II contain two standards for determining whether a University's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities, the other covers new construction and alterations. Which standard applies depends upon the date of construction or alteration of the facility.

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<sup>1</sup> During our investigation, the University confirmed that the automatic door opener at the third floor women's restroom was repaired.

For those University facilities constructed or altered after the effective date of Section 504 and Title II, the University will ensure that its facilities are readily accessible to and usable by persons with disabilities. C.F.R. § 104.23; 28 C.F.R. § 35.151. Depending on the date of construction, we evaluated whether the University's facilities complied with the applicable new construction/alteration standard:

- American National Standards Institute (ANSI) Standards A117.1-1961 (re-issued 1971);
- Uniform Federal Accessibility Standards (UFAS);
- 1991 ADA Standards for Accessible Design (1991 ADA Standards); or
- 2010 ADA Standards for Accessible Design (2010 ADA Standards).

At the CLCC, we determined that the handrails at the series of ramps in the southeast corner of the building do not comply with either ANSI or the 1991 ADA Standards because they do not extend at least 12 inches beyond the top and bottom landings. We also found that the interior laboratory classroom doors surveyed by OCR do not comply with 1991 ADA Standards because they require more than 5 pounds of force to open. Finally, we found that the University failed to maintain an accessible feature as required by the Title II regulation at § 35.133 when the power-assisted door at the third floor women's restroom was inoperable.

With respect to the laboratory classrooms in the LSE, PSE and PSH buildings, although they may appear to be inaccessible to modern sensibilities, we found they comply with the applicable accessibility standards with some limited exceptions.<sup>2</sup> We found that room signage, both original and that installed at a later date, does not meet the applicable accessibility standards and thus is not accessible to or usable by persons with disabilities, under Section 504 and Title II. We also found an altered element (wall shelf) does not meet the applicable accessibility standard and thus is not accessible to or usable by persons with disabilities under Section 504 and Title II.

In summary, we find that the University did not comply with Section 504, Title II, and their implementing regulations because a series of ramps, doors, room signage and a wall shelf were inaccessible to individuals with disabilities.

### ***Evacuation Plan at CLCC***

#### **Facts**

As noted above, the CLCC building was constructed in two phases. Construction began on Phase I on or about October 1989 and Phase II started on or about October 2002. The CLCC is a four-story building with three levels above ground and one lower level. All levels can be accessed by elevator and by stairs.

The University stated that it has no written evacuation plan for the CLCC. The University explained that it provides annual fire prevention and safety training to all University employees that includes training on evacuation and reassembly outside the building. The University provided a PowerPoint presentation it uses during the training. The presentation discusses the causes of and how to prevent fires. It also discusses evacuation procedures and notes that persons with special exiting needs may need assistance and to be aware of Areas of Refuge and Rescue.

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<sup>2</sup> The University observed that it expects accommodation requests in older buildings constructed prior to adoption of the ADA. When such requests are made, the University stated that it will make modifications or adjustments to a laboratory classroom that will enable the student to participate in the program including, for example: modifying equipment, making the lab accessible to accommodate the disability or reassigning the service or program to an accessible lab or building. The University noted, and the Complainant did not dispute, that the Complainant did not request an accommodation(s) from the University to make her laboratory classes more accessible.

In addition, the University said it also publishes an *Emergency Response Guide Flipchart* available in University laboratories, assembly classrooms, breakrooms, etc. The University stated it also provides information about evacuation on its internal website. Fire evacuation information is available to students, faculty and staff on the University's LiveSafe mobile app. OCR was unable to access the LiveSafe app and the information on the University's internal website.

At the CLCC, the University stated that evacuation procedures are covered as part of the safety discussions at the beginning of each lab course. Further, the Areas of Refuge are signed throughout the CLCC.

### Analysis and Conclusion

The complainant alleged that the University does not maintain a fire evacuation plan for students with mobility disabilities at the CLCC building.

Title II and Section 504 do not contain specific provisions that set out what must be included in emergency evacuation plans to make those programs accessible to persons with disabilities. However, these programs are covered under the general provisions of Section 504 and Title II, which require, among other things, that no qualified person with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity of the University. 34 C.F.R. §§ 104.21 and 104.22; 28 C.F.R. §§ 35.149 and 35.150. Individuals with disabilities must be provided with an opportunity to obtain the same results, gain the same benefit, and reach the same level of achievement as is provided to others. 34 C.F.R. § 104.4, 28 C.F.R. § 35.130(b)(1)(iii).

Under these general provisions, as applied to the University's emergency evacuation programs at CLCC, the University is required to take the needs of staff, students and visitors with a variety of disabilities into account to ensure equal access. The University admitted that there is no written emergency evacuation plan for the CLCC. OCR's review of the University's PowerPoint presentation used during its annual employee training showed there is no specific information on how to assist persons with a variety of disabilities during an evacuation or what people waiting in areas of refuge and rescue are to expect once there. The University did not provide information regarding the substance of the training it said was provided to all students in laboratory classes at the CLCC so we were unable to evaluate that training. While we applaud the University's innovation in implementing its LiveSafe app, OCR was unable to access the app which raises concern that others, including students and visitors with disabilities, might be equally unable to access that information.

OCR noted during our onsite visit several signs denoting the location of Areas of Refuge in the CLCC. The University's training was notably void, however, of instruction on how University staff is to assist people with disabilities who use the Areas of Refuge during an emergency. For example, there is no information explaining how emergency personnel are notified that an individual needs assistance evacuating or whether an employee is to remain in the Area of Refuge with the person needing evacuation assistance until emergency personnel arrive. Based on the evidence, we concluded that the University does not provide equal access to its evacuation procedures at the CLCC to staff, students and visitors with a variety of disabilities. Accordingly, we concluded the University is not in compliance with Section 504 and Title II and their implementing regulations in this respect.

We thank the University for voluntarily entering into an Agreement to resolve these compliance concerns. OCR is closing the investigative phase of this case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the

University has fulfilled all of the terms of the Agreement. When the monitoring phase of this case is complete, OCR will close case number 08-16-2198 and will send a letter to the University, copied to the Complainant, stating that this case is closed.

This letter sets forth OCR's determination in an individual OCR cases. 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.

OCR routinely advises recipients of Federal funds that Federal regulations prohibit intimidation, harassment, or retaliation against those filing complaints with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please also note the complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

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.

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation of this case. If you have any questions or concerns, please feel free to contact XXXXXXX, Equal Opportunity Specialist and primary contact for this case, at XXXXXXXXXXXX or by email at XXXXXXXXXXXX@ed.gov, or me at (303) 844-5927.

Sincerely,

/S/

Thomas M. Rock  
Supervising General Attorney

Enclosure – Resolution Agreement