



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

September 13, 2016

Dr. Ángel Cabrera
President
George Mason University
5100 Alan and Sally Merten Hall, Ffx, MSN: 3A1
Fairfax, Virginia 22030

Re: OCR Complaint No. 11-15-2252
Letter of Findings

Dear Dr. Cabrera:

The Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) has completed its investigation of the complaint we received on May 28, 2015, against George Mason University (the University). The original complaint contained six different allegations but five of them were administratively closed on January 13, 2016, leaving only one allegation that OCR investigated. Specifically, OCR investigated the allegation that the University discriminated against the Complainant during the XXXX convocation on May 13, 2015, because the ramp to the stage is not wheelchair accessible.

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504) and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II) and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. The laws enforced by OCR prohibit retaliation against any individual who asserts rights or privileges under these laws or who files a complaint, testifies, or participates in an OCR proceeding. Because the University receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

In reaching a determination, OCR reviewed documents provided by the Complainant, interviewed the Complainant and University staff, and conducted a site visit on June 8, 2016.

After carefully considering all of the information obtained during the investigation, OCR found a compliance violation. The University must resolve the violation through the enclosed resolution agreement.

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

OCR's findings and conclusions are discussed below.

Background

The Complainant raised concerns about the ramp used during the University's convocation events. Specifically, the Complainant alleged that the ramp used during convocation, which is held in the EagleBank Arena, was not accessible to individuals in wheelchairs. For convocation events hosted by the University, a temporary, non-fixed center stage is erected on the main floor of the arena. According to the University, the stage is "accessed by two ramps, one to the left and one to the right of the stage." The ramps used during the Universities convocation events are owned by the Fairfax County Public Schools, who built them for use during high school graduations. Each of the multi-directional ramps consist of three ramp runs that are connected at 90 degree angles and have railings on both sides. Connecting these ramp runs are two landings, with a third landing at the top that connects the ramp to the stage. At the bottom of each run there is a metal plate that has a diamond-pattern, non-slip surface. All ramp runs and railings are made of painted, black wood. The ramp that connects to the right side of the stage, if in the audience, was used as the entrance to the stage (entrance ramp) and the ramp connected to the left side of the stage, if in the audience, was used by students exiting the stage (exit ramp). OCR notes that the stage was also accessible by stairs, which are located on either side of the stage. Both the stage and ramps are used on a temporary basis; being erected before the high schools graduations and the University's convocation events and then taken down after all events are completed.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a University's programs or activities because the University's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a University's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a University 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. The University may comply with this requirement through the reassignment of

programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a University must give priority to methods that offer programs, activities and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the University design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the University alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II regulation, University had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADAAG) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that University had a choice of complying with either UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards). The Title II regulation provides that Universities are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 Standards, a University may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the University alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

Analysis

According to the Complainant, the University discriminated against her by not making the convocation events equally accessible to her. Specifically, the Complainant argued that the ramps used during the College of Science convocation, which took place on May 13, 2015, were not accessible because they were too steep and narrow to navigate safely given her medical condition. In an email from the University's facilities manager, the ramps were "built at least 15

years ago” and that “[e]ach ramp was 4 feet wide and 48 feet in total length, with a 1/12 slope,” which they believe was in compliance with ADA standards at the time of construction. During an on-site visit to the EagleBank Arena, OCR took detailed measurements of the ramps used by the University during the May 2015 convocation event, taking pictures for reference. Because the ramps are erected before graduation and convocation events every year, and then taken down after graduation season is over, OCR considers them new construction for the purposes of this investigation; thus, both ramps must meet the 2010 Standards. After measuring the ramps, OCR found that they did not comply with the 2010 Standards and that the University failed to provide the Complainant with equal access to the convocation event.

Slopes

OCR found that both ramps are not fully accessible because they have slopes greater than 8.33 percent, which is the maximum slope allowed under the 2010 standards (§ 405.2). As part of the investigation, OCR took 54 measurements along the runs of each ramp, measuring the slope at three spots (left edge, center, and right edge) at the beginning, middle, and end of each run. Out of the 54 measurements taken, OCR found 17 to be greater than 8.33 percent, which ranged from 8.4 to 10.1 percent. OCR also measured the slope of the metal plates at 6 different locations, and each measurement was well beyond 8.33 percent. The 2010 Standards require a running slope on each ramp to be no greater than 8.33 percent; therefore, these ramps do not meet the 2010 Standards.

Handrails/Edge Protection

Additionally, OCR found that the ramps handrails and edge protection were not in compliance with the 2010 Standards. First, the handrails on the entrance ramp do not start at the beginning of the ramp run, as required by § 505.3 of the 2010 Standards. Second, the exit ramp does not have 12 inch handrail extensions that “return to a wall, guard, or the landing surface” (2010 Standards § 505.10). Third, the upper section of the exit ramp, where students in wheelchairs would enter the ramp upon leaving the stage, was only 35 1/8 inches wide, which is nearly an inch narrower than the 36 inches required by § 405.5 of the 2010 Standards. These railings are not in compliance with the 2010 Standards because they are not the correct width, they do not begin at the proper location, and they are missing proper handrail extensions.

OCR also found issues with the barrier height on every run of the exit ramp. According to 2010 Standards § 405.9, each ramp run shall have either a 12 inch extended floor or ground surface (2010 Standards § 405.9.1) or a curb or barrier edge that is either 4 inches high or prevents a 4 inch sphere from passing under it (2010 Standards § 405.9.2). The barrier edge on the University’s exit ramp is only 3 inches, and therefore does not comply with the 2010 Standards.

Landings

According to measurements taken during the on-site investigation, most of the ramp’s landings are not in compliance with the 2010 Standards. According to § 405.7.4 of the 2010 Standards, ramps that change directions must have, at a minimum, landings that are 60 inches long and 60 inches wide. OCR measured the two landings within the entrance ramp and found that they were

approximately 42 inches long and 45 inches wide. The exit ramp had similar measurements. OCR measured the landings within the exit ramp and found that they were approximately 48 inches wide and 48 inches long. Because all four of the landings are well below 60 inch by 60 inch landings, they are not in compliance with the 2010 Standards.

Similarly, the landings on both ramps that connect to the stage are not the requisite length. According to § 405.7.3 of the 2010 Standards, a 60 inch long landing is required at the top and bottom of each ramp. OCR measured the landings at the top of the entrance and exit ramps (where the ramps meet the stage) and they were both 48 inches long. Because these landings are not the requisite 60 inches, they are not in compliance with the 2010 Standards. Where the entrance ramp meets the stage, the landing is 48 inches long.

Conclusion

On September 9, 2016, the University agreed to implement the enclosed Resolution Agreement (Agreement), which commits the University to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the University is designed to resolve the issues of noncompliance. Under Section 303(b) of OCR's *Case Processing Manual*, a complaint will be considered resolved and the University deemed compliant if the University enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the University's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively. OCR may conduct additional visits and may request additional information as necessary to determine whether the Recipient has fulfilled the terms of the Agreement and is in compliance with Section 504 and Title II, with regard to the issues raised. As stated in the Agreement entered into by the University on September 9, 2016, if the University fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings, including to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings, including to enforce the Agreement, OCR shall give the University written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This concludes OCR's investigation of the complaint. This letter 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. 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 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, or participates in an OCR proceeding. 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, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the University's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Todd Rubin, the OCR attorney assigned to this complaint, at 202-453-5923 or Todd.Rubin@ed.gov, or Eugene Sowa, the other OCR attorney assigned to this complaint, at 202-453-6869 or Eugene.Sowa@ed.gov.

Sincerely,

/S/

David Hensel
Supervisory Attorney, Team III
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Ruth Townsend, Esq.