



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION XV**

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CLEVELAND, OH 44115

**REGION XV
MICHIGAN
OHIO**

Nichole DeCaprio, Esq.
Associate Counsel
Office of General Counsel
Kent State University
P.O. Box 5190
Kent, Ohio 44242

Re: OCR Docket #15-16-2130

Dear Ms. DeCaprio:

This letter is to inform you of the disposition of the above-referenced complaint originally filed with the U.S. Department of Justice (DOJ) on February 10, 2016, against Kent State University (the University). The complaint was referred to the U.S. Department of Education, Office for Civil Rights (OCR), on April 12, 2016. The complaint alleged that the University has discriminated against individuals on the basis of disability. Specifically, the complaint alleged that the University discriminated against a person on the basis of disability with respect to its failure to provide a door and hook inside the designated accessible stall in the women's restroom at the Memorial Athletic and Convocation Center (the MAC Center) on January 10, 2016.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the University is subject to Section 504 and Title II.

Based on the complaint allegations, OCR initiated an investigation of the following issue: whether the University excluded a qualified person with a disability from participation in, denied her the benefits of, or otherwise subjected her to discrimination under any of its programs or activities, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130.

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

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The Complainant told OCR she attended an event at the MAC Center in January 2016. She stated that the designated accessible stall in the women's restroom did not have a door, and instead had a curtain that did not close completely, leaving small openings on the right and left side of the stall. Because of this, the stall provided no privacy. In addition, the Complainant stated that there was no place in the stall to store her cane and purse. She complained to the University and sought relief through DOJ, which forwarded her complaint to OCR.

Prior to the completion of OCR's investigation, the University asked to resolve this complaint pursuant to Section 302 of OCR's *Case Processing Manual* (CPM). The resolution is explained below.

Applicable Regulatory Standards

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 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).

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. §§ 104.21-104.23; 28 C.F.R. §§ 35.149-35.151.

Resolution and Conclusion

As noted above, prior to the completion of OCR's investigation, the University expressed interest in resolving the allegations in the complaint pursuant to Section 302 of OCR's CPM, which provides that a complaint may be resolved before the conclusion of an OCR investigation if a recipient asks to resolve the complaint and signs a resolution agreement that addresses the complaint allegations. Such a request does not constitute an admission of liability on the part of the University, nor does it constitute a determination by OCR that the University has violated any of the laws that OCR enforces. On November 10, 2016, the University submitted the enclosed signed resolution agreement (the Agreement) to OCR. The provisions of the Agreement are aligned with the complaint allegations and

the information obtained to date during the investigation and consistent with applicable regulations. When fully implemented, the Agreement will resolve the allegations in the complaint.

In light of the Agreement, OCR finds that the complaint is resolved, and OCR is closing its investigation as of the date of this letter. OCR will, however, monitor the University's implementation of the Agreement. Should the University fail to fully implement the Agreement, OCR will take appropriate action to ensure the University's compliance with the Section 504 and Title II regulations.

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.

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.

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 harmed individual may file a complaint alleging such treatment.

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

OCR looks forward to receiving the University's first monitoring report by February 14, 2017. For questions about implementation of the Agreement, please contact xxxxxxxx xxxxxxxx, who will be monitoring the University's implementation, by e-mail at xxxxxx.xxxxxxxx@ed.gov or by telephone at (216) xxx-xxxx. For questions about this letter, please contact xxxxxxxx xxxxxxxx, Supervisory Attorney/Team Leader at (216) xxx-xxxx.

Sincerely,

/s/

Meena Morey Chandra
Regional Director

Enclosure