



UNITED STATES DEPARTMENT OF EDUCATION

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FYI

from: Melany Newby

Dr. David Ward
Chancellor
The University of Wisconsin - Madison
500 Lincoln Drive
Madison, Wisconsin 53706

Re: 05952004

Dear Dr. Ward:

This letter is to notify you of the determinations made by the U.S. Department of Education (Department), Office for Civil Rights (OCR), regarding the resolution of the above-referenced complaint of discrimination which was filed against the University of Wisconsin School of Law (the University). The complainant alleged that the University discriminated against her on the basis of her disability (paraplegia or incomplete quadriplegia) in that: 1) she was not provided accessible parking or an accessible route to the Law School; 2) the Law School does not have accessible restroom facilities; and 3) in the fall of 1994 she was denied the opportunity to enroll in a National Labor Relations Board course because the Law School refused to reassign the course to an accessible location.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. 794, as implemented in the regulation found at 34 C.F.R. 104, which prohibits discrimination on the basis of disability in programs and activities receiving Federal financial assistance from the Department. OCR also has jurisdiction as a designated agency under Title II of the Americans with Disabilities Act of 1990 (ADA) over complaints alleging discrimination on the basis of disability that are filed against public institutions of education and public libraries. Since the University receives funds from the Department and is a public entity, it is subject to the provisions of Section 504 and Title II of the ADA.

In order to resolve this complaint, OCR interviewed the complainant, University staff, and other witnesses. OCR also reviewed documentary evidence provided by the complainant and the University. With respect to the complainant's allegation that she was not provided accessible parking or an accessible route to the Law School, OCR made the following determinations.

- The complainant suffered spinal fractures as the result of an industrial accident. Because of those injuries, the complainant's ability to walk is substantially limited.

- As of December, 1994, and continuing to date, the complainant is not attending classes at the University due to health-related reasons.
- The University does not provide parking in the central campus area for non-disabled students. Non-disabled students who wish to drive to school must purchase a parking permit and park in a remote lot on the west end of campus from which they can access bus service to the central campus area.
- Parking in the central campus area is generally limited to University employees and students with disabilities. Students with disabilities who have a Wisconsin Department of Transportation disabled parking permit may park in designated disabled parking spots without purchasing a separate permit from the University. If they so choose, students with disabilities can purchase a disabled parking permit from the University that authorizes them to park in other spaces that are not specifically designated for disabled parking. It also authorizes them to park in the remote lot or in a centrally located parking garage from which they can access the University's paratransit system. The University's paratransit system has designated stops throughout the campus, and, in certain cases, the driver of the paratransit vehicle may have to personally assist the person with a mobility impairment to get from the vehicle to a building entrance.
- At the time in question, Fall of 1994, Law classes were still being held in the Law Building. Due to construction and renovation, all Law classes were reassigned to Commerce Hall in Spring of 1995. The parking spaces located closest to the Law Building required travel either up or down relatively steep inclines as a consequence of the surrounding topography. The complainant parked in a number of those spaces throughout Fall of 1993 and Spring of 1994 and walked to the Law Building, but contends she did so only with the greatest difficulty.
- In May of 1994, the University agreed to permit the complainant to park on a grassy area located just outside the southeast entrance to the Law Building. The area in question was not designated for parking.
- In Fall of 1994, the University began renovating the Law Building. By letter dated August 8, 1994, the University informed the complainant that she could continue parking in the grassy area outside the Law Building, and that she would be given advance notice if the space should become unavailable due to construction or any other reason. The

University also reminded the complainant of the availability of its paratransit service.

- By letter to the University dated September 16, 1994, the complainant through her attorney requested "a parking space near an accessible entrance to each building in which she [the complainant] has classes. This parking space should be marked, secured, and guaranteed to her."
- In October 1994, the University informed the complainant that she would no longer be permitted to park in the grassy area outside the Law Building because the vehicular route leading to the Law Building was obstructed due to construction. The University suggested a number of alternative parking spaces which had been used by the complainant in the past and again offered the complainant the use of its paratransit system.
- On November 18, 1994, University representatives met with the complainant's attorney in part to discuss parking and transportation options for the complainant. The University offered to the complainant the use of its paratransit system, or in the alternative, to transport the complainant by cab. The complainant subsequently declined both offers, and reiterated her request that the University provide her with a parking space near an accessible entrance to each building in which she attended class.
- In late November of 1994, the complainant provided the University with a written statement from her physician, which stated that, in the physician's medical opinion, transporting the complainant by van was contraindicated and could be injurious to the complainant's back. The complainant's physician stated that the complainant "must take extreme care to avoid jarring, pressure, uncontrolled or unexpected movements of her back to which she would be exposed while riding on forms of public transportation, such as buses, vans, trains, etc. She is therefore prohibited from using these forms of transportation. [The complainant] is restricted, ideally, to walking short distances on soft level surfaces and spending the remainder of her time securely positioned in a sedentary or supine position."
- By letter addressed to the complainant's attorney dated January 4, 1995, the University requested additional medical information to substantiate the opinion of the complainant's physician. The University requested permission to speak to the complainant's physician, and requested access to recent, relevant medical records. The University further requested that, if the complainant's medical records proved inconclusive or if the University disagreed with the judgment of the complainant's physician, that the

complainant participate in a second evaluation at the University's expense. The complainant refused the University's requests.

The Law Building was constructed prior to 1977, and is thus an "existing facility" with respect to the requirements of both Section 504 and the ADA. With regard to existing facilities, the relevant Section 504 regulation, 34 C.F.R. § 104.22 (a), states that a "recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons." The relevant ADA regulation sets out essentially similar requirements.

OCR found that the parking and transportation options offered to the complainant by the University rendered the University's Law education program readily accessible to the complainant. OCR found insufficient evidence to conclude otherwise. The complainant rejected all of the parking and transportation options offered by the University, and instead requested that she be provided with parking spaces proximate to buildings to which she needs to have access. In November of 1994 the complainant submitted limited medical documentation in support of this request. In order to make a determination as to the complainant's request, the University requested permission to speak to her physician, review her medical records, and if necessary, have the complainant examined by another physician at the University's expense. That request was reasonable in light of the variety of parking and transportation options offered by the University and the nature of the parking facilities requested by the complainant. Thus the complainant's allegation that she was not provided accessible parking or an accessible route to the Law School in violation of Section 504 and the ADA is not supported by a preponderance of the evidence.

As noted previously, the University's paratransit system might in certain cases require the driver of a paratransit vehicle to personally assist a person with a mobility impairment to get from the vehicle to a building entrance. Such forms of personal assistance would violate both Section 504 and the ADA where other means are reasonably available that would enable a person with a disability to get independently from the vehicle to the building's entrance. According to the University, once construction work on the Law Building is completed, the Law Building will have an accessible entrance on Lathrop Drive. There will be an accessible route from that entrance to accessible parking spots and to a designated paratransit stop on Lathrop Drive. Under those circumstances, the driver of a paratransit vehicle will no longer need to personally assist a person with a mobility impairment to get from the vehicle to the building entrance.

OCR was unable to investigate the complainant's allegation that the Law School does not have accessible restroom facilities because the Law School was closed for extensive renovation at the time of OCR's site visit. The University has provided OCR with a letter of assurance stating that, when renovations to the Law School are completed, the school will have restroom facilities that are accessible in conformity with the provisions of the Americans with Disabilities Act Accessibility Guidelines (ADAAG).

With respect to the complainant's allegation that in Fall of 1994 she was denied the opportunity to enroll in a National Labor Relations Board (NLRB) course because the Law School refused to reassign the course to an accessible location, OCR made the following determinations.

- The complainant stated to OCR that she spoke with an Assistant Dean at the Law School on several occasions about enrolling in the NLRB course, and that she requested that the course be reassigned to an accessible classroom. According to the complainant, the Assistant Dean stated on one of those occasions that the University had no duty to reassign the course to another location, and on a subsequent occasion stated that the course was full. The complainant stated that she also spoke to a staff person of the University's McBurney Center about having the NLRB course reassigned to an accessible classroom. The complainant further stated that she may have discussed the University's alleged refusal to reassign the NLRB course with a colleague.
- The Assistant Dean told OCR that in the Spring of 1994, the complainant may have discussed the possibility of taking the NLRB course. He said that he may have suggested to the complainant that she take a more fundamental course, such as Administrative Law, but he does not recall telling the complainant not to take the NLRB course, nor does he recall the complainant requesting reassignment of the NLRB course to another location. He further stated that the complainant presented him with a handwritten list of courses for which she wished to register that may have included the NLRB course, but that she did so after the registration deadline had passed. He denies having told the complainant that the course was full, as only six students registered for the course, which had an enrollment capacity of twenty-five students.
- The McBurney Center staff person informed OCR that the complainant never discussed with her the possibility of taking the NLRB course, or of having the course reassigned to another location.

Page 6 - Dr. David Ward

- OCR contacted the complainant's colleague at the complainant's request. The colleague does not remember the complainant stating that the University had refused to reassign the NLRB course to another location, but does recall the complainant mentioning that the NLRB course was full.

As stated previously, § 104.22(b) sets out reassignment of classes as one of several means by which a recipient may render its programs accessible. The relevant ADA regulations contain essentially similar provisions. The complainant's contention that she requested reassignment of the NLRB course is contradicted by University personnel. There are no written records that substantiate or disprove the complainant's allegation. There is thus insufficient evidence upon which to base a conclusion that the complainant requested reassignment of the NLRB course, that the request was denied, and that the complainant was thereby denied the opportunity to take the course.

In summary, OCR finds that there is insufficient evidence to support a conclusion that the University discriminated against the complainant on the basis of her disability with respect to the allegations raised in this complaint. This concludes OCR's consideration of this complaint.

We wish to express our appreciation to you and your staff, especially Mr. Casey A. Nagy, University Legal Counsel, for the cooperation extended to us during our resolution of this complaint. If you have any questions regarding these determinations, please contact Mr. James E. Heffernan, Branch Chief, Postsecondary Education Division, at 312/353-3865.

Sincerely,



- Dr. Mary Frances O'Shea
Director
Postsecondary Education Division

cc: Casey A. Nagy
University Legal Counsel