



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

March 17, 2016

XXXX

Michael Brickey, Interim Superintendent
Lee County Public Schools
153 School Board Place
Jonesville, Virginia 24263

RE: OCR Complaint No. 11-15-1233
Resolution Letter

Dear Mr. Brickey:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on May 6, 2015 against Lee County Public Schools (the Division). The complaint alleged that the Division's XXXX School (the School) is not accessible to or usable by persons with mobility impairments in that the School lacks:

1. A readily accessible entrance to the School building;
2. An accessible path of travel in the building between the two floors;
3. Accessible restroom stalls; and
4. Accessible parking.

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 regardless of whether they receive Federal financial assistance from the Department. Because the Division receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint. On March 4, 2016, the Division signed a Resolution Agreement (copy enclosed) to address OCR's preliminary concerns. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the Resolution Agreement.

Legal 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 with 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). Pursuant to Section 504, recipient school districts must also provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford students with disabilities an equal opportunity for participation in such services and activities. 34 C.F.R. § 104.4(b)(2).

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; 28 C.F.R. § 35.149. The regulations reference standards for determining whether an entity's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing construction, new construction or alterations. The applicable standard depends upon the date of construction or alteration of the facility. For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located." Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice (DOJ) states that the term "facility" includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

For existing facilities, the regulations require an educational institution 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. This compliance standard is referred to as "program access." This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program or activity. 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992.

To provide program access in existing facilities, an institution may use such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare or other social services at alternative

accessible sites, alteration of existing facilities, construction of new facilities or any other methods that result in making its program or activity accessible to persons with disabilities. A recipient is not required to make structural changes in existing facilities where other methods are effective in providing program access. However, in choosing among available methods for providing program access, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

For support facilities for a program in an existing facility being viewed in its entirety, such as restrooms, telephones, water fountains, and parking spaces, it should be determined whether sufficient numbers exist that are reasonably convenient, usable in inclement weather, and appropriate to the use of the facility, with the focus being on whether access to the program is unreasonably limited by the lack of accessible support facilities.

For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). With regard to alterations, each facility or part of a facility that is altered by, on behalf of or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, 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. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

The new construction provisions of the Section 504 and Title II regulations 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, public entities 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 public entities had a choice of complying with one of the following: UFAS; ADAAG; or the 2010 ADA Standards for Accessible Design (2010 Standards).¹ The Title II regulation provides that public entities are required to comply with the 2010 Standards for construction or alterations commencing on or after March 15, 2012.² If an element does not meet the requirements of the applicable standard at the time of construction, the standard applied to fix the problem is the current standard, in this case the 2010 Standards. Additionally, if the facility

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and alterations.

meets the 2010 Standards, there is no further determination required as to whether it met the standard at the time of construction.

In sum, OCR will consider if each facility meets the 2010 Standards; if it does not, OCR will look to the applicable accessibility standards at the time of construction and will evaluate program access. Because the School was initially constructed in 1952 and renovated in 1999, the applicable accessibility standards at the time of construction were the 1991 ADAAG standards (1991 Standards). However, to remedy elements that do not comply with the 1991 Standards, the elements must be made accessible in accordance with the 2010 Standards.

Factual Background

The Division is a small school division located in the southwestern-most county in Virginia, in a rural and mountainous area. The School has about 230 students in pre-K through 4¹¹¹ grade. The School building was originally constructed in 1952 and because the School is built on a hill, it is a two-story, split-level building. In 1993, a platform lift was installed to provide access to the stage in the auditorium. In 1999, the following alterations were constructed: (1) a lunchroom was added to the eastern end of the School; (2) six new classrooms and three accessible restrooms were added to the western end of the School; (3) an accessible ramp was added to the western end addition; and (4) a parking lot was built in proximity to the western entrance.

Allegation 1: The School lacks a readily accessible entrance to the school building

The complaint alleged that the gate to the accessible ramp is locked during school hours; because people cannot access the ramp, they cannot alert anybody that they are at the door. Further, it was alleged that the walkway to the other entrance by the cafeteria is too steep for wheelchair use and has no railings, and the entrance doors are too heavy to open. In addition, it was alleged that the back entrance by the trailers has a step down and the door is usually locked.

During the investigation, OCR identified concerns that the School's designated accessible entrance may not be readily accessible to persons with mobility impairments due to possible locked access to the ramp, inadequate staff monitoring of the doorbell, and limited access to School programs and activities from that entrance. OCR also identified a concern that signage around the building likely does not meet the accessible entrance signage requirements of the 1991 Standards or the 2010 Standards.

Allegation 2: The School lacks an accessible route between the two floors

The complaint alleged that the "elevator"³ is not easily accessible and would be too tight for an oversized wheelchair. It was also alleged that there is no signage indicating where the platform lift is, and the path to the platform lift is often blocked. In addition, it was alleged that in order to access the upper floor with the classrooms and accessible restrooms, a person with a mobility impairment has to go across the gym and use the small platform lift that is on the stage difficult to

³ OCR has determined it to be a lift. In accordance with the 2010 and 1991 Standards, it is referred to as a "platform lift" throughout this document.

operate; the doors to the platform lift on the top and bottom floors have to be shut in order for it to work and there is no intercom system in it if there are any problems.

OCR has identified concerns that the lift may not be readily accessible to persons with mobility impairments due to problems with unassisted use and clear floor space and may not provide program access when the gym or stage area is in use.

Allegation 3: The School lacks accessible restroom stalls

The complaint alleged that the bathrooms on the second floor lack wide stalls and are not accessible to persons with mobility impairments.

The School has two public restrooms, one for men and one for women, located within the academic wing on the second floor, and each one contains an accessible stall. There also are three unisex accessible restrooms in classrooms on the second floor that were built in 1999.

During the investigation, OCR identified concerns that the restrooms on the second floor (the academic wing) of the building may not be accessible in accordance with Sections 603 -606⁴ of the 2010 Standards and Sections 4.16 -4.19⁵ and 4.22 -4.24⁶ of the 1991 Standards. OCR also identified a concern that if there is not a readily accessible route between the two floors, a person with a mobility impairment who is located on the first floor (the cafeteria/ gymnasium wing) of the building may not be able to access the restrooms on second floor of the building.

Allegation 4: The School lacks accessible parking

The complaint alleged that the School does not have accessible parking. In addition, it was alleged that an accessible parking sign was put in place after the complaint was filed, but that the sign is by a gravel parking area with no lines marking any designated accessible spots.

Section 208.2 of the 2010 Standards and Section 4.1.2(5) of the 1991 Standards requires that if there are between 1 and 25 available parking spaces, there must be at least one accessible space and if there are between 26 and 50 spaces then at least two must be accessible spaces. Further, at least one of the spaces shall be a van accessible space. Section 208.3 of the 2010 Standards and Section 4.6.2 of the 1991 Standards requires that accessible spaces "serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance." Section 206.2.1 of the 2010 Standards further specifies that at least one accessible route shall be provided within the site from accessible parking spaces "to the accessible building or facility entrance they serve." The 2010 and 1991 Standards also set requirements for the width of the space and the access aisles, that the surface slope not exceed a certain percentage in all directions, and that proper signage be located "so they cannot be obscured by a vehicle parked in the space."

⁴ Sections 603-606 include detailed requirements for toilets, water closets, urinals, lavatories, and sinks including location, clearance, grab bars, and dispenser height.

⁵ Sections 4.16-4.19 include detailed requirements for water closets, toilet stalls, urinals, lavatories, and mirrors including location, clearance, grab bars, and dispenser height.

⁶ Sections 4.22-4.24 include requirements for toilet rooms, bathrooms, and sinks including clear floor space, height, and knee clearance.

During the investigation, OCR identified concerns that the School's designated accessible parking area by the School's accessible entrance fails to comply with the 2010 Standards or the 1991 Standards because it does not have any markings delineating spot width or aisles, and the accessible parking signs contain inadequate information, including van accessibility, and are located in inappropriate areas. OCR also has concerns that the designated accessible parking area is not located on the shortest accessible route of travel to the baseball field, the trailers or the accessible entrance to the cafeteria. In addition, because the parking lot has not been repaved since 1999, and the allegation that the accessible parking sign is by a gravel parking area, OCR also has concerns that the Division does not provide an accessible route of travel from the accessible parking spaces to the accessible School entrance.

During the investigation, OCR learned that there are additional parking areas surrounding the School, including a parking area on the eastern side of the School by the cafeteria where staff usually park their cars and another area in the back of the School that is used by people who want to get to the portable classrooms, the baseball field or the inaccessible rear entrance. OCR also identified concerns that these other parking areas may fail to comply with the 2010 Standards or the 1991 Standards because they also do not have appear to have any markings delineating spots or signs directing people to designated accessible parking. If the Division creates any other accessible entrances to the School to address the concerns identified under Allegations 1 and 2, then the Division also will need to address accessible spaces located on the shortest accessible route of travel from adjacent parking to any accessible entrances.

Conclusion

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement, which, when fully implemented, will resolve the allegations raised in this complaint. The provisions of the Resolution Agreement are aligned with the allegations and issues raised by the complaint and the information that was obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Resolution Agreement until the Division is in compliance with the statutes and regulations at issue in the case. Failure to implement the Resolution Agreement could result in OCR reopening the complaint.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the Division'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 Division 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 Division's cooperation in the resolution of this complaint. If you have any questions, please contact one of the attorneys assigned to this complaint: Kristi Bleyer, at 202-453-5901 or Kristi.Bleyer@ed.gov; or Dana Russo, at 202-453-6559 or Dana.Russo@ed.gov.

Sincerely,

/S/

Michael Hing
Supervisory Attorney, Team 1
District of Columbia Office
Office for Civil Rights

Enclosure

cc: Jason Ballum, Esquire and Anne Witt, Esquire