



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, DC

June 1, 2016

Dr. Aaron C. Spence
Superintendent
Virginia Beach City Public Schools
2512 George Mason Dr.
Virginia Beach, VA 23456

Re: OCR Complaint No. 11-15-1318
Letter of Findings

Dear Dr. Spence:

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 July 30, 2015 against Virginia Beach City Public Schools (the Division). The Complainant alleges that the Division discriminated against students and visitors on the basis of disability. Specifically, the complaint alleges that the following areas of the XXXX (the School) are not accessible to or usable by students and visitors with disabilities, particularly those with mobility impairments:

1. The outdoor exercise center does not have an accessible entrance/exit route that is firm, stable, and slip-resistant with a clear width; a range of exercise activities that are accessible through the use of ramps or transfer systems; or a floor/ground surface that is firm, stable, and slip-resistant.
2. The outdoor common space area does not have accessible fixed seating or an accessible entrance/exit route.
3. The baseball field and its fixed seating and other athletic fields do not have accessible entrance/exit routes that are firm, stable, and slip-resistant with a clear width.
4. The baseball dugout does not have accessible entrance/exit routes; a floor/ground surface that is firm, stable, and slip-resistant; or access to the space between the metal fence and the seating.
5. Sidewalks are in disrepair and have mats that create an uneven surface, creating physical barriers to accessibility.
6. The vegetable garden does not have an accessible entrance/exit route or a floor/ground surface that is firm, stable, and slip-resistant.
7. The portable buildings do not have accessible entrance/exit routes or external door handle hardware.
8. The School office does not have accessible entrance/exit routes or external door handle hardware.

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

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

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. 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.

In reaching a determination, OCR reviewed documents provided by the Complainant and the Division and conducted a site visit on November 2, 2015.

After carefully considering all of the information obtained during the investigation, OCR identified compliance concerns regarding allegations 1, 2, 3, 4, 7, and 8, which the Division agreed to resolve through the enclosed resolution agreement. However, OCR did not find sufficient evidence to support allegations 5 and 6.

OCR's findings and conclusions are discussed below.

Background

On XXXX, OCR received a complaint against the Division alleging that the Division discriminated against students and visitors on the basis of disability. The Complainant visited the School sometime in June 2015 and documented multiple outside areas which she believed to be inaccessible to individuals with mobility impairments. The Complainant submitted these areas of concern, with photos, to OCR. OCR visited the School on November 2, 2015, to examine each of the areas described in the allegations.

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 division's programs or activities because the division'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 division'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 division 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 division 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 division 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 division 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 division 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, divisions 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 divisions 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 divisions 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 division 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.

Analysis

- 1. The outdoor exercise center does not have an accessible entrance/exit route that is firm, stable, and slip-resistant with a clear width; a range of exercise activities that are accessible through the use of ramps or transfer systems; or a floor/ground surface that is firm, stable, and slip-resistant.*

The Division was unclear as to what OCR referred with the term “exercise center.” Based upon the photos provided by the Complainant and a discussion with the Division during the on-site, OCR concludes that it refers to three horizontal bars that appear to be a chin-up apparatus located on school grounds. The Division was unsure as to when the bars were constructed but the apparatus appears to have been built after 1992. Therefore, the ADAAG applies.

The ADAAG § 15.7 requires that exercise machines and equipment have a clear floor or ground space positioned for transfer and that exercise equipment be served by an accessible route.

OCR examined the chin-up apparatus. It is located near to the school building, but no sidewalk or other path of travel leads to it. The ground surface is sandy dirt. OCR determined that the chin-up apparatus does not have a clear floor or ground space or an accessible route, and, therefore, does not meet the requirements of the ADAAG § 15.7. The Division will either have to bring the bars into compliance with the 2010 Standards or remove them.

2. The outdoor common space area does not have accessible fixed seating or an accessible entrance/exit route.

The Division was unclear as to what OCR referred with the term “outside common space.” Based upon the photos provided by the Complainant and the narrative response provided by the Division, OCR concludes that it refers to what the Division calls the “outdoor classroom,” which consists of multiple picnic tables in a fenced-off area in front of the school building. The Division provides that the outdoor classroom was constructed in 2001.

Before the on-site, the Division modified some of the picnic tables, which are fixed, to provide additional clearance for wheelchair access at the table ends. The modification consists of new table-tops with long overhangs, providing spaces for wheelchairs at the ends of the tables.

Accessible Route

The ADAAG § 4.3 provides that facilities must have at least one accessible route to the boundary of each site. The route must have a stable, firm, slip-resistance surface that complies with § 4.5. The route must also comply with width, slope, and level requirements contained within § 4.3.

The outdoor classroom currently has a mulch-like material on the route from the entrance to the picnic tables. Engineered wood fiber, if properly installed and maintained correctly, meets the requirements of the ADAAG § 4.5. However, the Division did not provide OCR any evidence that the ground surface was installed properly using a multistep approach.¹ OCR concluded that the surfaces do not meet the requirements of the ADAAG § 4.5. It must be replaced with a ground surface that complies with the 2010 Standards.

¹ The Access Board describes a multilayer approach whereby the loose material is installed in layers, watered and compacted in order to achieve an accessible route and level clear ground space at equipment. <http://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground/6-recognize-that-proper-installation-is-key>.

Fixed Seating

The ADAAG § 4.1.3(18) provides that if fixed or built-in seating or tables are provided in accessible public or common use areas, at least five percent (5%), but not less than one, of the fixed or built-in seating areas or tables shall comply with the ADAAG § 4.32, the requirements for fixed seating or tables.

The outdoor classroom has nine tables with six standard seats each. Three tables have newly-installed tabletops designed to provide accessible spaces: two tables with six standard seats and one overhang on one end of the table; and one table with six standard seats and two overhangs, one on either end of the table. There are therefore 72 standard seats. Five percent of 72 is 3.6, so there must be at least four accessible spaces.

ADAAG §§ 4.2.4 and 4.32 require that accessible spaces have at least 30 inches by 48 inches of clear floor or ground space that does not overlap knee space by more than 19 inches; knee space at least 27 inches high, 30 inches wide, and 19 inches deep; and a table height of 28 to 34 inches.

The newly-installed tabletops are each 40 inches wide. The distance from the end of the bench to the end of the overhang ranges from 22 to 27 inches. The tables are 28.5 inches high. As currently constructed, the tables provide accessible space for persons sitting perpendicular to the benches, pulled up at the end of the tables. With this seating arrangement, there are four accessible spaces in compliance with ADAAG §§ 4.2.4 and 4.32. The fixed seating is therefore in compliance with ADAAG § 4.1.3(18).

3. The baseball field and its fixed seating and other athletic fields do not have accessible entrance/exit routes that are firm, stable, and slip-resistant with a clear width.

The Division provides that the campus contains a softball field and an “undefined multipurpose grass area,” both constructed in 1957. The baseball field has benches on the end of the field for players. Due to the date of construction the baseball field must meet program access requirements.

The baseball field and its seating are not readily accessible to and usable by individuals with disabilities. There is no accessible path to the field or seating and the Division does not currently have a plan to ensure accessibility. The Division therefore does not meet the program access requirement. The Division must develop a plan to ensure accessibility, should the need arise, or, as appropriate, move the activity/program to an accessible location.

OCR notes that under the 2010 Standards, an accessible route is required to connect the boundary of sport activities,² but areas of sport activity are exempt from floor and ground surface requirements.³

² Advisory 206.2.2.

³ Advisory 302.1.

- 4. The baseball dugout does not have accessible entrance/exit routes; a floor/ground surface that is firm, stable, and slip-resistant; or access to the space between the metal fence and the seating.*

The baseball field does not have a dugout, however, there is seating provided for the players. OCR determined the seating provided for players is not program accessible for the same reasons described in issue 3, above.

- 5. Sidewalks are in disrepair and have mats that create an uneven surface, creating physical barriers to accessibility*

The sidewalks were presumably constructed in 1957 with the school building. Upon visual inspection during the on-site, the sidewalks are not in disrepair.

However, there are mats laid down upon parts of the sidewalk. The mats are not original to the building, and were laid down after 2012. OCR will therefore assess them using the 2010 Standards. Under the 2010 Standards Section 403.4, any changes in level in a walking surface must comply with Section 303. The mats create a change in level and Section 303 applies.

The 2010 Standards Section 303.2 state that a vertical change in level of 0.25 inch is permitted. Any change in level between 0.25 inch and 0.5 inch must be beveled with a slope no steeper than 50%, and any change in level greater than 0.5 inch must be ramped.

OCR did not note any change in level greater than 0.25 inch upon visual inspection of the mats during the onsite. However, if the mats are layered and the edges are aligned, they could create a change in level greater than 0.25 inch. OCR notes that as a matter of technical assistance, the Division should ensure that the mats are not layered and aligned in such a way to create greater than a 0.25 inch change in level.

- 6. The vegetable garden does not have an accessible entrance/exit route or a floor/ground surface that is firm, stable, and slip-resistant.*

The Division provides that the vegetable garden was abandoned in Spring 2014 when the previous program housed in the school building, the XXXX, moved to a different building. OCR staff confirmed at the on-site that the vegetable garden no longer exists, and therefore no further discussion of accessibility is required. OCR notes that as a matter of technical assistance, should the vegetable garden or that area be used for other purposes, the Division should ensure it is accessible.

- 7. The portable buildings do not have accessible entrance/exit routes or external door handle hardware.*

The portable buildings were installed in 2001. They therefore have to comply with the ADAAG.

The Division provides that four of the six portable buildings are not in use and are scheduled for removal. Since receiving the complaint, VBCPS has installed new door handles on the remaining

two portable buildings. OCR confirmed at the on-site that only portables number 503 and 505 are still in use by the School.

Both portables 503 and 505 have a ramp leading from the sidewalk to the door of the portable. OCR examined the ramps and the door handle hardware.

Ramps

The ADAAG § 4.8 addresses requirements for ramps, which includes any accessible route with a slope greater than 1:20. Ramps must stay within the following specifications:

- Slope: no greater than 1:12, or 8.33%
- Rise: no greater than 30 inches
- Run: for a slope between 1:12 and 1:16 (6.25% to 8.33%), 30 feet; for a slope between 1:16 and 1:20 (5.0% and 6.25%), 40 feet.
- Width: no less than 36 inches
- Top and bottom landings: at least as wide as the ramp, and at least 60 inches long
- Mid-ramp landing, if the ramp changes direction: at least 60 inches by 60 inches
- Handrails
 - required on both sides for ramp runs with a rise greater than 6 inches or horizontal projection greater than 72 inches
 - height between 34 inches and 38 inches above the ramp surface
- Surface must be in compliance with ADAAG § 4.5:
 - firm, stable, and slip-resistant
 - changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2, or 50%; changes in level greater than ½ inch must use a ramp
- Edge protection: ramps and landings with drop-offs should have curbs, walls, railings, or other protecting surfaces
- Outdoor conditions: outdoor ramps should be designed so that water does not accumulate on their surfaces

Portable 503

The path leading to Portable 503 has a small concrete ramp, a landing, then a longer wooden ramp perpendicular to the first small ramp leading to the door of the portable. OCR took the following measurements at the onsite:

- Slope:
 - Lower concrete ramp: ranged from 4.0% to 11.9%
 - Upper wooden ramp: ranged from 1.3% to 5.6%
- Rise: 14 inches
- Run of upper ramp: approximately 18 feet, 1.5 inches
- Width: 45 inches
- Top landing: 45 inches across (as wide as the ramp); 58.5 inches long
- Bottom landing: n/a (bottom ramp ends at the sidewalk)
- Middle landing: 48 inches wide, 60 inches long
- Handrails: included on both sides of ramp; 34 inches above ramp surface

- Surface:
 - firm, stable, and slip-resistant, with a tar-like coating
 - 1.25 inch change in level between concrete ramp and middle landing
- Edge protection: ramps and landings have railings
- Outdoor conditions: ramp is designed so that water does not accumulate on its surface

The slope of the lower concrete ramp, the length of the top landing, the width of the middle landing, and the change in level between the concrete ramp and the middle landing violate the ADAAG. The violations also violate the 2010 Standards.

Portable 505

The path leading to Portable 505 is one continuous ramp, with no turns or switchbacks. OCR took the following measurements at the onsite:

- Slope: ranged from 6% to 11.5%
- Rise: 24 inches
- Run: approximately 26 feet, one inch
- Width: 45.25 inches
- Top landing: 58.5 inches across; 58.75 inches long
- Bottom landing: 50 inches across, 84 inches long
- Handrails: included on both sides of ramp; appropriate height, ascertained via visual inspection
- Surface: firm, stable, and slip-resistant, with a tar-like coating, but different levels exist between lower landing and ramp, as well as at the doorway to the portable
- Edge protection: ramps and landings have railings
- Outdoor conditions: ramp is designed so that water does not accumulate on its surface

The slope of the ramp, the length of the top landing, and the change in level between the lower landing and the ramp and at the door to the portable violate the ADAAG. The violations also violate the 2010 Standards.

Door Handle Hardware

The door handles were installed after the filing of this complaint. Therefore, the 2010 Standards apply.

The 2010 Standards Section 404.2.7 requires that handles are 34 inches minimum and 48 inches maximum above the finish floor or ground. Advisory 404.2.7 states that handles that can be operated with a closed fist or a loose grip accommodate the greatest range of users.

The newly-installed door handle hardware on both portables are lever-operated and comply with advisory 404.2.7. Neither are lower than 34 inches or higher than 48 inches above the finished floor: the handle on Portable 503 is 40 to 41 inches above the floor, and the handle on Portable 505 is 39.25 inches to 40.25 inches above the floor.

8. *The School office does not have accessible entrance/exit routes or external door handle hardware.*

The Division supplied OCR with a work order specifying that ramps were built to the primary exterior exits around the entire school in September 1994. This includes the ramp leading to the main entrance outside of the school office. The Division also told OCR that they believe the door handle at the main entrance was installed at the same time. The ADAAG therefore applies to the ramp and door handle.

Under the ADAAG § 4.13.19, door handle hardware must have a shape that is easy to grasp with one hand and does not require tight grasping, pinching, or twisting of the wrist to operate. U-shape handles are acceptable. Hardware must be mounted no higher than 48 inches above the floor.

The door handle to the school office begins 29 inches above the floor, and ends 35 inches above the floor, so that it fits within the acceptable range. The handle, which is U-shaped, can be operated with one hand and does not require tight grasping, pinching, or twisting of the wrist. The door hardware is therefore in compliance with the ADAAG.

The ADAAG § 4.8 addresses requirements for ramps, which includes any accessible route with a slope greater than 1:20. Ramps must stay within the following specifications:

- Slope: no greater than 1:12, or 8.33%
- Rise: no greater than 30 inches
- Run: for a slope between 1:12 and 1:16 (6.25% to 8.33%), 30 feet; for a slope between 1:16 and 1:20 (5.0% and 6.25%), 40 feet.
- Width: no less than 36 inches
- Top and bottom landings: at least as wide as the ramp, and at least 60 inches long
- Handrails
 - required on both sides for ramp runs with a rise greater than 6 inches or horizontal projection greater than 72 inches
 - height between 34 inches and 38 inches above the ramp surface
- Surface must be in compliance with ADAAG § 4.5:
 - firm, stable, and slip-resistant
 - changes in level between ¼ inch and ½ inch shall be beveled with a slope no greater than 1:2, or 50%; changes in level greater than ½ inch must use a ramp
- Edge protection: ramps and landings with drop-offs should have curbs, walls, railings, or other protecting surfaces
- Outdoor conditions: outdoor ramps should be designed so that water does not accumulate on their surfaces

OCR took the following measurements at the onsite:

- Slope: ranged from 4.8% to 11.7%
- Rise: 12 inches
- Run: 12 feet
- Width: at least 36 inches, confirmed via visual inspection
- Top landing: 67 inches wide, 54 inches long

- Bottom landing: n/a – ramp begins at wide walkway
- Handrails
 - Present on both sides of the ramp
 - Height: 36 inches above the ramp surface
- Surface: firm, stable, and slip-resistant
- Outdoor conditions: outdoor ramp is designed so that water does not accumulate on its surface

The slope of the ramp and the length of the top landing violate the ADAAG. The violations also violate the 2010 Standards.

Conclusion

On May 24, 2016, the Division agreed to implement the enclosed Resolution Agreement (Agreement), which commits the Division to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the Division 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 Division deemed compliant if the Division enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the Division'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 Division 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 Division on May 24, 2016, if the Division 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 Division 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 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 regarding this letter, please contact Nicole Dooley, the OCR attorney assigned to this complaint, at (202) 453-5675 or nicole.dooley@ed.gov.

Sincerely,

/S/
Michael Hing
Supervisory Attorney
Office for Civil Rights
District of Columbia Office

Enclosure

cc: Dannielle Hall-McIvor, Division Attorney