



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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REGION IV
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October 17, 2013

Dr. Joseph Joyner
Superintendent
St. Johns County School District
40 Orange Street
St. Augustine, Florida 32084-3693

Re: Complaint #04-13-1269

Dear Dr. Joyner:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on April 9, 2013 against the St Johns County School District (District), alleging discrimination on the basis of disability. Specifically, the Complainant alleged that the playgrounds at Cunningham Creek Elementary School (School) are not accessible to students with mobility impairments.

As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Accordingly, OCR has jurisdiction over this complaint.

OCR investigated the following legal issue:

- Whether the School's playgrounds are inaccessible to or unusable by individuals with mobility impairments in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-104.23, and the Title II implementing regulation at 28 C.F.R. §§ 35.149-35.151.

In reaching its determination, OCR conducted an on-site accessibility review of 4 playgrounds, analyzed documents pertinent to the complaint issue and conducted interviews with the Complainant, the School's Maintenance Manger, the District's Executive Director for Facilities and New Construction, and the District's Building Code Administrator. OCR evaluates evidence obtained during an investigation under a preponderance of the evidence standard to determine whether the greater weight of the evidence is sufficient to support a conclusion that a recipient, such as the District, failed to comply with the laws or regulations enforced by OCR, or whether the evidence is insufficient to support such a conclusion. Based on its investigation, OCR has determined that there is sufficient evidence to conclude that Playground 2 is in full compliance with Section 504 and Title II, while Playgrounds 1, 3 and 4 are not in full compliance with Section 504 and Title II, with respect to the issue investigated.

Applicable Regulatory Authority

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by fostering educational excellence and ensuring equal access.*

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The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. § 104.21-104.23. Comparable sections of the Title II regulation are found at 28 C.F.R. § 35.149-35.151. Both regulations provide generally that no qualified individual with a disability shall, because facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs, or activities, or be subjected to discrimination.

However, the requirements for accessibility are different for existing buildings and for new construction. Facilities constructed prior to the effective dates of the regulations (June 3, 1977 for Section 504 and January 26, 1992 for Title II), are regarded as “existing facilities” and must comply with 34 C.F.R. §104.22 and 28 C.F.R. §35.150. A recipient is not required to make each existing facility or every part of an existing facility physically accessible to and usable by individuals with disabilities. Rather, the regulations require that programs or activities, viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. This is referred to as “program access.” The regulations do not require structural changes where other methods are effective in providing access to the programs. Such measures might include redesigning equipment and relocating classes to accessible rooms or buildings. In choosing among available methods for providing program access, institutions must give priority to methods that offer services, programs, and activities in the most integrated setting appropriate. In addition, recipients must implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by persons with disabilities.

Facilities constructed or altered after the effective dates of these regulations are treated as "new construction" and must comply with 34 C.F.R. § 104.23, and 28 C.F.R. § 35.151 so as to be readily accessible to and usable by individuals with disabilities.

Facilities may be both "existing facilities" for purposes of Title II of the ADA and “new construction" under Section 504. In these cases, recipients/public entities must meet both the Title II standards for existing facilities and the standards for new construction under Section 504. Public entities may have a choice of which of several standards they can follow, depending upon the date of construction.

Each facility or part of a facility for which construction commenced on or after June 3, 1977, for purposes of Section 504, or January 26, 1992 for purposes of Title II, is considered new construction and must be readily accessible to and usable by persons with disabilities 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a). In addition, each facility or part of a facility which is altered after the effective date of the regulation shall, 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).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). For facilities constructed after January 18, 1991, recipients may choose one of two standards to adhere to in constructing their facility.

Newly constructed or altered facilities for which construction commenced after January 18, 1991, must conform to a specific, minimum set of physical guidelines set out in the Uniform Federal Accessibility Standards, Appendix A to 41 C.F.R. Subpart 101-19.6 (UFAS), 34 C.F.R. § 104.23(c).

Or, in the alternative, recipient institutions also have the option of implementing new construction in accordance with another set of accessibility standards, the Americans with Disabilities Act Accessibility

Standards for Accessible Design (revised September 15, 2010) and available at, <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm> but must consistently utilize one standard per facility. If the start date for construction is on or after March 15, 2012, all newly constructed or altered state and local government facilities must comply with the 2010 Standards. Before that date, the 1991 Standards (without the elevator exemption), the UFAS, or the 2010 Standards may be used for such projects when the start of construction commences on or after September 15, 2010.

A recipient institution may deviate from technical and scoping requirements of either standard if, by doing so, it achieves substantially equivalent or greater accessibility and usability of the facility 34 C.F.R. § 104.23(c).

A playground “meets the definition of “facility” under the Section 504 and Title II regulations, 34 C.F.R. §104.3(i) and 28 C.F.R. §35.104. A playground facility is comprised of both the structure or equipment installed to provide play activities and the surface surrounding such structure or equipment.

OCR applied the 2010 ADA Standards for Accessible Design to the playgrounds at the School. Playgrounds 1, 3 and 4 were all altered after the March 15, 2012 implementation of the revision of the ADA (revised September 15, 2010). While Playground 2 was altered in 2011, the School informed OCR that the same accessibility standards were used to ensure compliance with the ADA; consequently OCR applied the 2010 standards to Playground 2 as well.

2010 ADA Standards for Accessible Design¹

206 Accessible Routes

206.2.17 Play Areas: Play areas shall provide accessible routes in accordance with 206.2.17. Accessible routes serving play areas shall comply with Chapter 4 except as modified by 1008.2.

206.2.17.1 Ground Level and Elevated Play Components. At least one accessible route shall be provided within the play area. The accessible route shall connect ground level play components required to comply with 240.2.1 and elevated play components required to comply with 240.2.2, including entry and exit points of the play components.

240 Play Areas

240.1 General. Play areas for children ages 2 and over shall comply with 240.

240.2 Play Components. Where provided, play components shall comply with 240.2.

240.2.1 Ground Level Play Components. Ground level play components shall be provided in the number and types required by 240.2.1. Ground level play components that are provided to comply with 240.2.1.1 shall be permitted to satisfy the additional number required by 240.2.1.2 if the minimum required types of play components are satisfied. Where two or more required ground level play components are provided, they shall be dispersed throughout the play area and integrated with other play components.

240.2.1.1 Minimum Number and Types. Where ground level play components are provided, at least one of each type shall be on an accessible route and shall comply with 1008.4.

¹ Located at: <http://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#c1>.

240.2.1.2 Additional Number and Types. Where elevated play components are provided, ground level play components shall be provided in accordance with Table 240.2.1.2 and shall comply with 1008.4.

Exception to 240.2.1.2. If at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components, the play area shall not be required to comply with 240.2.1.2.

Table 240.2.1.2 Number and Types of Ground Level Play Components Required to be on Accessible Routes		
Number of Elevated Play Components Provided	Minimum Number of Ground Level Play Components Required to be on an Accessible Route	Minimum Number of Different Types of Ground Level Play Components Required to be on an Accessible Route
1	Not applicable	Not applicable
2 to 4	1	1
5 to 7	2	2
8 to 10	3	3
11 to 13	4	3
14 to 16	5	3
17 to 19	6	3
20 to 22	7	4
23 to 25	8	4

240.2.2 Elevated Play Components. Where elevated play components are provided, at least 50 percent shall be on an accessible route and shall comply with 1008.4.

302 Floor or Ground Surfaces

302.1 General. Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.

304 Turning Space

304.1 General. Turning space shall comply with 304.

304.2 Floor or Ground Surfaces. Floor or ground surfaces of a turning space shall comply with 302. Changes in level are not permitted.

304.3 Size. Turning space shall comply with 304.3.1 or 304.3.2.

304.3.1 Circular Space. The turning space shall be a space of 60 inches (1525 mm) diameter minimum. The space shall be permitted to include knee and toe clearance complying with 306.

304.3.2 T-Shaped Space. The turning space shall be a T-shaped space within a 60 inch square minimum with arms and base 36 inches wide minimum. Each arm of the T shall be clear of obstructions 12 inches minimum in each direction and the base shall be clear of obstructions 24 inches minimum. The space shall be permitted to include knee and toe clearance complying with 306 only at the end of either the base or one arm.

402 Accessible Routes

402.1 General. Accessible routes shall comply with 402.

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.

403.4 Changes in Level. Changes in level shall comply with 303.

403.5 Clearances. Walking surfaces shall provide clearances complying with 403.5.

403.5.1 Clear Width. Except as provided in 403.5.2 and 403.5.3, the clear width of walking surfaces shall be 36 inches minimum.

Exception: The clear width shall be permitted to be reduced to 32 inches minimum for a length of 24 inches maximum provided that reduced width segments are separated by segments that are 48 inches long minimum and 36 inches wide minimum.

403.5.2 Clear Width at Turn. Where the accessible route makes a 180 degree turn around an element which is less than 48 inches wide, clear width shall be 42 inches minimum approaching the turn, 48 inches minimum at the turn and 42 inches minimum leaving the turn.

403.5.3 Passing Spaces. An accessible route with a clear width less than 60 inches shall provide passing spaces at intervals of 200 feet maximum. Passing spaces shall be either: a space 60 inches minimum by 60 inches minimum; or, an intersection of two walking surfaces providing a T-shaped space complying with 304.3.2 where the base and arms of the T-shaped space extend 48 inches minimum beyond the intersection.

405 Ramps

405.1 General. Ramps on accessible routes shall comply with 405.

405.2 Slope. Ramp runs shall have a running slope not steeper than 1:12.

405.7.2 Width. The landing clear width shall be at least as wide as the widest ramp run leading to the landing.

405.7.3 Length. The landing clear length shall be 60 inches long minimum.

1008 Play Areas

1008.1 General. Play areas shall comply with 1008.

1008.2 Accessible Routes. Accessible routes serving play areas shall comply with Chapter 4 and 1008.2 and shall be permitted to use the exceptions in 1008.2.1 through 1008.2.3. Where accessible routes serve ground level play components, the vertical clearance shall be 80 inches high (2030 mm) minimum.

1008.2.1 Ground Level and Elevated Play Components. Accessible routes serving ground level play components and elevated play components shall be permitted to use the exceptions in 1008.2.1.

Exceptions to 1008.2.1:

- 1.** Transfer systems complying with 1008.3 shall be permitted to connect elevated play components except where 20 or more elevated play components are provided no more than 25 percent of the elevated play components shall be permitted to be connected by transfer systems.
- 2.** Where transfer systems are provided, an elevated play component shall be permitted to connect to another elevated play component as part of an accessible route.

1008.2.4 Clear Width. Accessible routes connecting play components shall provide a clear width complying with 1008.2.4.

1008.2.4.1 Ground Level. At ground level, the clear width of accessible routes shall be 60 inches minimum.

Exceptions to 1008.2.4.1:

- 1.** In play areas less than 1000 square feet, the clear width of accessible routes shall be permitted to be 44 inches minimum, if at least one turning space complying with 304.3 is provided where the restricted accessible route exceeds 30 feet in length.

2. The clear width of accessible routes shall be permitted to be 36 inches minimum for a distance of 60 inches maximum provided that multiple reduced width segments are separated by segments that are 60 inches wide minimum and 60 inches long minimum.

1008.2.4.2 Elevated. The clear width of accessible routes connecting elevated play components shall be 36 inches (915 mm) minimum.

Exceptions to 1008.2.4.2:

1. The clear width of accessible routes connecting elevated play components shall be permitted to be reduced to 32 inches minimum for a distance of 24 inches maximum provided that reduced width segments are separated by segments that are 48 inches long minimum and 36 inches wide minimum.

2. The clear width of transfer systems connecting elevated play components shall be permitted to be 24 inches minimum.

1008.2.5 Ramps. Within play areas, ramps connecting ground level play components and ramps connecting elevated play components shall comply with 1008.2.5.

1008.2.5.1 Ground Level. Ramp runs connecting ground level play components shall have a running slope not steeper than 1:16.

1008.2.5.2 Elevated. The rise for any ramp run connecting elevated play components shall be 12 inches maximum.

1008.2.5.3 Handrails. Where required on ramps serving play components, the handrails shall comply with 505 except as modified by 1008.2.5.3.

Exceptions to 1008.2.5.3:

1. Handrails shall not be required on ramps located within ground level use zones.

2. Handrail extensions shall not be required.

1008.2.5.3.1 Handrail Gripping Surfaces. Handrail gripping surfaces with a circular cross section shall have an outside diameter of 0.95 inch minimum and 1.55 inches maximum. Where the shape of the gripping surface is non-circular, the handrail shall provide an equivalent gripping surface.

1008.2.5.3.2 Handrail Height. The top of handrail gripping surfaces shall be 20 inches minimum and 28 inches maximum above the ramp surface.

1008.2.6 Ground Surfaces. Ground surfaces on accessible routes, clear floor or ground spaces, and turning spaces shall comply with 1008.2.6.

1008.2.6.1 Accessibility. Ground surfaces shall comply with ASTM F 1951. Ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951.

1008.3 Transfer Systems. Where transfer systems are provided to connect to elevated play components, transfer systems shall comply with 1008.3.

1008.3.1 Transfer Platforms. Transfer platforms shall be provided where transfer is intended from wheelchairs or other mobility aids. Transfer platforms shall comply with 1008.3.1.

1008.3.1.1 Size. Transfer platforms shall have level surfaces 14 inches deep minimum and 24 inches wide minimum.

1008.3.1.2 Height. The height of transfer platforms shall be 11 inches minimum and 18 inches maximum measured to the top of the surface from the ground or floor surface.

1008.3.1.3 Transfer Space. A transfer space complying with 305.2 and 305.3 shall be provided adjacent to the transfer platform. The 48 inch long minimum dimension of the transfer space shall be centered on and parallel to the 24 inch long minimum side of the transfer platform. The side of the transfer platform serving the transfer space shall be unobstructed.

1008.3.1.4 Transfer Supports. At least one means of support for transferring shall be provided.

1008.3.2 Transfer Steps. Transfer steps shall be provided where movement is intended from transfer platforms to levels with elevated play components required to be on accessible routes. Transfer steps shall comply with 1008.3.2.

1008.3.2.1 Size. Transfer steps shall have level surfaces 14 inches deep minimum and 24 inches wide minimum.

1008.3.2.2 Height. Each transfer step shall be 8 inches high maximum.

1008.3.2.3 Transfer Supports. At least one means of support for transferring shall be provided.

1008.4 Play Components. Ground level play components connected by ramps shall comply with 1008.4.

1008.4.1 Turning Space. At least one turning space complying with 304 shall be provided on the same level as play components. Where swings are provided, the turning space shall be located immediately adjacent to the swing.

1008.4.2 Clear Floor or Ground Space. Clear floor or ground space complying with 305.2 and 305.3 shall be provided at play components.

1008.4.4 Entry Points and Seats. Where play components require transfer to entry points or seats, the entry points or seats shall be 11 inches minimum and 24 inches maximum from the clear floor or ground space.

EXCEPTION: Entry points of slides shall not be required to comply with 1008.4.4.

1008.4.5 Transfer Supports. Where play components require transfer to entry points or seats, at least one means of support for transferring shall be provided.

Background

The Complainant alleged that the playgrounds at the School are not accessible to her daughter (Student). The Student was in the first grade at the time the complaint was filed, during the 2012-2013 school year. The Student is currently in second grade. The Student has Spinal Bifida, and uses a wheelchair. The Complainant stated that the deficiencies in the playgrounds include a lack of accessible route to the play areas, lack of play equipment for the Student to utilize, and a border around the play equipment which prevents the Student from entering the playground without assistance.

The Student's most recent IEP is dated May 29, 2013, and contains provisions for adapted physical education activities. The Complainant informed OCR that during the IEP meeting she requested a one on one aide to assist the Student during recess and P.E. The request was denied because the IEP team determined that staff currently working with the Student provided her with sufficient support. The Complainant was provided with notice of her procedural safeguard rights. The issue of a one on one aide involves an educational decision beyond the scope of OCR's jurisdiction and can be resolved through a request for a due process hearing under IDEA.

The School has four playgrounds. Playground 1 is used by pre-kindergarten and kindergarten students. Playground 2 is used by students in the Exceptional Student Education program. Playgrounds 3 and 4 are used by students in grades 1-5. As a part of its investigation OCR analyzed the play components, accessible routes, and ground surfaces for each of the four playgrounds. All four playgrounds were built in 1995. Playground 1 was built in 1995 and modified in 2002. The 2002 modifications included a new elevated play structure and new fiber wood mulch; the playground's ground was resurfaced in 2013. Playground 2 was modified in 2002 and 2011. The 2002 modification included the addition of a rubber play surface around some of the equipment. The rubber play surface was expanded to the entire playground in 2011. Playground 3 was modified in 2012 and 2013. The 2012 modification included the addition of engineered wood fiber mulch. In April of 2013 Playground 3 was modified to include the addition of sidewalks and a ramp that connects the sidewalk to the play area. Playground 4 was modified in 2002, 2012 and 2013. In 2002 an elevated play structure was upgraded; in 2012 the ground's mulch was upgraded; and in 2013, sidewalks and a ramp connecting the ground to the composite elevated play structure were added.

OCR Factual Findings and Analysis

Playground 1

In its review of Playground 1, OCR examined the playground's play components, the route from the School building to the playground, and the route within the playground connecting the play components.

Playground 1 contains 3 types of ground level play components, comprising a total of 4 ground level components (2 spring riders, 1 climbing dinosaur, and a playhouse). The ground level play components are dispersed throughout the play area and integrated with other play components, in compliance with 240. The playground also contains 2 types of elevated components, comprising a total of 3 elevated components that are a part of a composite play structure (2 slides and 1 climbing ladder). Table 240.2.1.2, regarding the number and types of ground level play components required to be accessible, provides that for 2 to 4 elevated play components, the playground must contain a minimum of 1 ground level play component. Thus, Playground 1 is in compliance with 240.2.1.2.

A smooth concrete route, 67 inches wide with a slope not steeper than 1:20, provides direct access from the back of the School's Kindergarten classrooms to the entrance of Playground 1, in compliance with 302, 402, 403 and 1008. The ground level components within the play area are connected by a walking surface not steeper than 1:20 and a vertical clearance of more than 80 inches, in compliance with 402, 403, and 1008.2. All routes connecting ground level play components have a clear width of over 60 inches with the exception of the playhouse which has a clearance of 37 inches for a distance less than 60 inches, in compliance with 1008.2.4.1. All ground level play components have turning spaces of at least 60 inches in diameter or T-shaped space, in compliance with 304 and 1008.4.1. All play components which require transfer to entry points, measure between 11 and 24 inches, in compliance with 1008.4.4.

Playground 1 contains a transfer system that connects the playground's elevated play components. The transfer system is part of the composite play structure. The transfer system allows students with mobility impairments to access elevated play components without the use of a wheelchair or other mobility device. The transfer system consists of a transfer platform, transfer steps, and transfer supports. The transfer platform's height from the ground is 15.5 inches, and its width and depth are 38 inches, in compliance with 1008.3. The transfer platform is also unobstructed on one side so as to provide a parking space for a wheelchair or other mobility device. The transfer system provides transfer steps, with each step measuring 6.5 inches high, 15.5 inches deep, and 37 inches wide, in compliance with 1008.3. The transfer system connects 2 of the 3 elevated components, 1 slide and 1 climbing ladder. The transfer system also has a transfer support which allows students with mobility impairments to move from a wheelchair onto the transfer platform, in compliance with 1008.3.

The ground surface in Playground 1 is wood fiber mulch. According to 1008.2.6.1 ground surfaces shall comply with the American Society for Testing Materials (ASTM)-F 1951. The School provided OCR with documentation that verifies that the ground surfaces of Playgrounds 1, 3 and 4 were inspected by an ASTM approved inspector in 2012. According to 1008.2.6.1 ground surfaces shall be inspected and maintained regularly and frequently to ensure continued compliance with ASTM F 1951; moreover, according to 302.1, floor and ground surfaces shall be stable, firm, and slip resistant. Although Playground 1 was recently deemed compliant with ASTM requirements, OCR's visual observation revealed areas of the ground surface within the play area that were lumped together, uneven, and not smooth for wheelchair access. Because the ground surface did not appear to be regularly and frequently maintained, the ground surface in Playground 1 is not in compliance with 1008.2.6.1. Proper and frequent maintenance of the ground surface material is required by the School in order to maintain continued compliance with 1008.2.6.1.²

In conclusion, OCR finds that Playground 1 is not in full compliance with the ADA Standards for Accessible Design because the ground surface is not regularly and frequently maintained, in noncompliance with 1008.2.6.1.

Playground 2

In its review of Playground 2, OCR examined the playground's play components, the route from the School building to the playground, and the route within the playground connecting the play components.

Playground 2 contains 9 types of ground components, totaling 20 ground level components, dispersed throughout the play area and integrated with other play components (1 tic tac toe board, 1 globe, 2 spring riders, 7 swings, 4 playhouses, 1 ball drop, 2 sand boxes, 1 ground bar, 1 climbing dinosaur), in compliance with 240. Playground 2 contains 4 types of elevated play components, for a total of five elevated components (2 slides, 1 tunnel, 1 driving wheel, and 1 climbing ladder). Table 240.2.1.2, regarding the number and types of ground level play components required to be accessible, provides that for 4 to 6 elevated play components, the playground must contain a minimum of 2 ground level play components, of different types. Accordingly, because Playground 2 contains 20 ground components, of 9 different types, Playground 2 is in compliance with 240.2.1.2.

The route from the back of the School's main building to the entrance of Playground 2 is smooth concrete, with a width greater than 60 inches, and with a slope not steeper than 1:20, in compliance with 302, 402, 403 and 1008. The ground level components within the play area are connected by a walking surface not steeper than 1:20, a vertical clearance of more than 80 inches, and a clear width of 60 inches, in compliance with 402, 403,

² OCR's investigation revealed the same play area ground surface deficiency found in Playground 1 present in Playgrounds 3 and 4, which ground surfaces also contain the same wood fiber mulch as that found in Playground 1. Thus, the discussions for Playgrounds 3 and 4 will not detail this item of noncompliance within those play areas.

and 1008.2. Additionally, all ground level play components have turning spaces of at least 60 inches in diameter in compliance with 304 and 1008.4.1. All play components which require transfer to entry points measure between 11 and 24 inches, in compliance with 1008.4.4.

Playground 2 contains a transfer system connecting elevated play components. The transfer system allows students with mobility impairments to access the elevated play components without the use of a wheelchair or mobility device. The transfer system consists of a transfer platform, transfer steps, and transfer supports. The transfer platform's height from the ground is 14 inches; the width is 36.5 inches and the depth is 38 inches, in compliance with 1008.3. The transfer platform is also unobstructed on one side so as to provide a parking space for a wheelchair or other mobility device. Each transfer step measures 6.5 inches high, 15.5 inches deep, and 36.5 inches wide, in compliance with 1008.3. The transfer system and steps lead to 2 elevated play components (1 slide and 1 tunnel). The tunnel, which is accessed using the transfer system, leads to the other 3 elevated play components (1, slide, 1 driving wheel, and 1 climbing ladder), in compliance with 1008.3. The transfer system also has a transfer support which allows students with mobility impairments to move from a wheelchair or other mobility device onto the transfer platform, in compliance with 1008.3.

The route within Playground 2 is comprised of both smooth concrete and rubber, in compliance with 1008.2.6.1. The concrete and rubber are both smooth, and slip resistant so as to allow easy maneuvering by a wheelchair or other mobility device. The entire ground surface within the playground is smooth, flat, and slip resistant, in compliance with 302 and 1008.2.6.

In conclusion, OCR finds that Playground 2 is fully in compliance with the ADA Standards for Accessible Design.

Playground 3

In its review of Playground 3, OCR examined the playground's play components, the route from the School building to the playground, and the route within the playground connecting the play components.

Playground 3 contains only one type of ground play component, a swing set, and no elevated play components. There are 8 swings totaling 8 ground level components. Because Playground 3 contains no elevated play components, Table 240.2.1.2, regarding the required number and types of ground level play components, is not applicable. All ground level play components in Playground 3 have turning spaces of at least 60 inches in diameter immediately adjacent to the swings, in compliance with 304 and 1008.4.1. While the swings in Playground 3 are adjustable, the entry points to all swings in the playground measure between 11 and 24 inches, in compliance with 1008.4.4.

A flat smooth concrete sidewalk, more than 60 inches wide and with a running slope not steeper than 1:20, in compliance with 302, 402, 403 and 1008, leads from the back of the School building to the entrance of Playground 3. The sidewalk's ground surface is stable, firm, and slip resistant, in compliance with 302 and 403, and contains no changes in level, in compliance with 303. Although a plastic border surrounds the perimeter of Playground 3, the border contains an opening that allows a ground level ramp to connect the sidewalk to the playground. This ramp is 36 inches wide, with a slope not steeper than 1:12, in compliance with 403, 405, and 1008.2.5. Additionally, the ramp, located within the ground level use zone, does not require handrails, in compliance with 1008.2.5.3. The route serving the ground level components has a vertical clearance of more than 80 inches and a clear width of more than 60 inches, in compliance with 1008.2.

In conclusion, as discussed above under Playground 1, because the ground surface in Playground 3 is not regularly and frequently maintained as required by 1008.2.6.1, OCR finds that Playground 3 is not in full compliance with the ADA Standards for Accessible Design.

Playground 4

In its review of Playground 4, OCR examined the playground's play components, the route from the School building to the playground, and the route within the playground connecting the play components.

Playground 4 contains 4 types of ground level components dispersed throughout the play area and integrated with other play components, in compliance with 240. There are a total of 35 ground level components: 32 swings, 1 playing dome, 1 playhouse, and 1 Little Tikes gear shifts. Playground 4 also has a composite play structure that contains 4 types of elevated components, for a total of 6 elevated components. The elevated components consist of 3 slides, 1 tic tac toe board, 1 music wall, and 1 climbing ladder. Of the 6 elevated play components, 4 different types (1 slide, the tic tac toe board, the music wall, and the climbing ladder) can be directly accessed by students with mobility impairments using a ramp that leads from the ground to the composite structure. Accordingly, because at least 50 percent of the elevated play components are connected by a ramp and at least 3 of the elevated play components connected by the ramp are different types of play components, the play area is not required to comply with Table 240.2.1.2, regarding the number and types of ground level play components required to be on an accessible route.³ Additionally, all ground level play components have turning spaces of at least 60 inches in diameter in compliance with 304.3.1; and all play components which require transfer to entry points measure between 11 and 24 inches, in compliance with 1008.4.4.

The route from the back of the School's main building to the entrance of Playground 4 consists of flat concrete which is stable, firm, and slip resistant, with a width of 69 inches and a slope not steeper than 1:20, in compliance with 302, 402, 403 and 1008. Like Playground 3, Playground 4 is surrounded by a plastic border, with an opening that allows a ground level entrance ramp to connect the playground and the sidewalk. The ground level ramp is identical to the ground level ramp referenced in OCR's discussion of Playground 3, and is in compliance with applicable regulations as it measures the required 36 inches in width, and does not have a slope steeper than 1:12 in compliance with 403, 405, and 1008.2.5. Additionally, because the ramp serving the entrance to the play area is located within a ground level use zone, handrails are not required, in compliance with 1008.2.5.3.

The ground level components within the play area are connected by a walking surface not steeper than 1:20 a vertical clearance of more than 80 inches, and a clear width of over 60 inches, in compliance with 402, 403, and 1008.2. All ground level play components have turning spaces of at least 60 inches in diameter in compliance with 304 and 1008.4.1. All play components which require transfer to entry points measure between 11 and 24 inches, in compliance with 1008.4.4.

Playground 4 has a ramp connecting the elevated play components. The ramp allows students with mobility impairments to access several of the elevated play components. Using the ramp a student can directly access the tic tac toe board, the music wall, the climbing ladder, and one of the slides. The ramp, which is unobstructed, has a slope not steeper than 1:12, provides a clear width of 36 inches, and leads to a landing 62 inches long and 60 inches wide, in compliance with 403, 405, and 1008.2. There are handrails for the ramp to

³ Although Playground 4 is not required to comply with Table 240.2.1.2, which requires 2 ground level play components for every 5 to 7 elevated play components, Playground 4, is nonetheless compliant with 240.2.1.2, because it contains 35 ground level components, of 4 different types.

assist students with mobility impairments at the entrance of the composite play structure. The handrails measure between 20 and 28 inches, in compliance with 1008.2.5.3.2.

In conclusion, as discussed above under Playground 1, because the ground surface in Playground 4 is not regularly and frequently maintained as required by 1008.2.6.1, OCR finds that Playground 4 is not in full compliance with the ADA Standards for Accessible Design.

Conclusion

For the foregoing reasons, OCR has determined that, based upon a preponderance of the evidence, there is sufficient evidence to conclude that the School's playgrounds are not in compliance with Section 504 and Title II. Specifically, while Playground 2 is in compliance with the ADA Standards for Accessible Design, Playgrounds 1, 3 and 4 are not in full compliance with these standards. OCR will require the School to remedy the compliance concerns noted herein with the attached resolution agreement.

This concludes OCR's consideration of this complaint, which we are closing effective the date of this letter. The Complainant may file a private suit in federal court whether or not OCR finds a violation. Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If we receive such a request, we will seek to protect, to the extent possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

This is a letter of findings issued by OCR to address an individual OCR case. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

Intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces, or because one has made a complaint, testified, assisted, or participated in any manner in an investigation in connection with a complaint.

If you have any questions, please contact Brandon Washington, Investigator, at (404) 974-9442 or Arthur Manigault Esq., Compliance Team Leader at (404) 974-9376.

Sincerely,

Cynthia G. Pierre, Ph.D.
Regional Director

Enclosure