



**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS**

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June 28, 2017

Dr. Jennifer Walthall
Secretary
Office of the Secretary
Indiana Family and Social Services Administration
402 W. Washington Street
P.O. Box 7083
Indianapolis, IN 46207-7083

RE: OCR Case No. 05-17-3002
Vocational Rehabilitation Services –
Valparaiso, Indiana

Dear Dr. Walthall:

This is to inform you of the disposition of the complaint filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Indiana Family and Social Services Administration's Vocational Rehabilitation Services (VRS). The complaint, OCR Case No. 05-17-3002, was filed on January 17, 2017, and alleged discrimination based on disability.

The Complaint alleged that the Valparaiso, Indiana, office of the VRS is not accessible to individuals with disabilities in that it lacks accessible parking; an accessible route to the front entrance; an accessible front entrance; an accessible route into and through the VRS office; and an accessible entrance to the conference room. The complaint also alleges that the Valparaiso, Indiana, office of the VRS discriminated against the Complainant on the basis of disability (XXXXXXXXXX) by failing to provide a reasonable accommodation in the form of XXXXXXXXXXXXXXXXXXXX which was accessible to or usable by the Complainant.

OCR is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131–12134, and its implementing regulation, 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a public entity, the VRS is subject to Title II. OCR also is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance (FFA). As a recipient of FFA, the VRS is subject to Section 504. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Before OCR conducted an on-site visit or otherwise completed its investigation, VRS asked to enter into a resolution agreement to resolve the allegations in the complaint. Accordingly, as discussed further below, the issues raised in the complaint will be addressed pursuant to Section 302 of OCR's *Complaint Processing Manual*.

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

Applicable Legal Standards

Discrimination prohibited

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient of Federal financial assistance, or be subjected to discrimination by a recipient.

General Accessibility Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, provides that no qualified person with a disability shall, because a recipient'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 program or activity to which Section 504 applies. The Title II regulation contains a similar provision for public entities, at 28 C.F.R. § 35.149.

For purposes of determining accessibility, Section 504 and Title II define a "facility" to include all portions of buildings, structures, equipment, walks and other real and personal property. 34 C.F.R. § 104.3(i); 28 C.F.R. § 35.104. Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice 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.

Existing Facilities and New Construction

The regulations implementing Section 504 and Title II contain two standards for determining whether the recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities; the other covers new construction and alterations.

An existing facility is one constructed or altered before June 3, 1977, for Section 504, and before January 26, 1992, for Title II. 34 C.F.R. § 104.22; 28 C.F.R. § 35.150. For existing facilities, each facility need not be readily accessible and usable. Instead, each program or activity is to be operated so that the program or activity, when viewed in its entirety, is readily accessible and usable.

Under Section 504, any facility or part of a facility for which construction commenced on or after June 3, 1977 is considered "new construction." Any portion of an existing facility that was altered on or after June 3, 1977 is an "alteration." The Section 504 regulation, at 34 C.F.R. § 104.23, requires each "new construction" or part thereof constructed by, on behalf of, or for the use of an institution be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. Similarly, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility 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.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), designates the *American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped* [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities for where construction or alteration commenced between June 3, 1977 and January 18, 1991, and the *Uniform Federal Accessibility Standards* (UFAS) for facilities for which constructed or alteration commenced between January 18, 1991 and January 25, 1992. New construction and alterations commencing between January 26, 1992 and March 15, 2012 must conform to UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards) or equivalent standards. The Department of Justice published revised regulations for Titles II of the ADA on September 15, 2010. These regulations adopted revised, enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards). The 2010 ADA Standards went into effect on March 15, 2012, although entities had the option of using them prior to their effective date.

Under Title II, any facility or part of a facility for which construction commenced on or after January 26, 1992 is considered “new construction.” The Title II regulation, at 28 C.F.R. § 35.151, requires each facility or part of a facility constructed by, on behalf of, or for the use of a public entity to be designed and constructed in such a manner that the facility or part of the facility is readily accessible to and usable by individuals with disabilities. Any portion of an existing facility that was altered on or after January 26, 1992 is an “alteration.” Under Title II, each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient, in a manner that affects or could affect the usability of the facility or part of the facility 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.

The Title II regulation, at 28 C.F.R. § 35.151(c), and the corresponding Appendix, state that new construction and alterations that commenced on or after July 26, 1992 and prior to September 15, 2010 must comply with either the Uniform Federal Accessibility Standards (UFAS) or the 1991 ADA Standards for Accessible Design (1991 Standards). In September 2010, the regulations implementing Title II were amended and new accessibility guidelines were adopted. The 2010 ADA Standards for Accessible Design (2010 Standards) apply to physical construction or alterations that commence on or after March 15, 2012. Facilities constructed or altered on or after September 15, 2010 and before March 15, 2012 are in compliance with Title II if they meet the 1991 Standards, UFAS, or the 2010 Standards. OCR Notice of Interpretation, Federal Register, Vol. 77, No. 50, pages 14972-76 (March 14, 2012) allows use of the ADA Standards to meet the compliance requirements under Section 504.

Factual Summary

General Background

The Complainant is XXXXXXXXXXXXX who has received services from the Valparaiso, Indiana, office of the VRS since XXXX. The VRS is operated under the Bureau of Rehabilitation Services (BRS), a program within the Division of Disability and Rehabilitation Services (DDRS). DDRS is a division within the Indiana Family and Social Services Administration (FSSA), the agency designated by the State of Indiana to administer the vocational rehabilitation services portion of Indiana's Unified or Combined State Plan. *See* 34 C.F.R. § 361.13(a); 34 C.F.R § 361.5(c)(12). The Valparaiso VRS office authorizes any and all of the services allowed under the Vocational Rehabilitation program. *See* 34 C.F.R. § 361.48.

Building and Lease Background

VRS reported that, to the best of its knowledge, the building and the parking lot at the Valparaiso VRS office was constructed in 1999. When FSSA entered into its lease by contract on March 12, 2009, the landlord agreed to reconfigure the walls, the ceiling, and all mechanicals serving the VRS office. This included providing a reception area with a built-in wheelchair accessible counter and installing a wheelchair accessible sink with handicap accessible paper towel and toilet paper holders. FSSA renewed its lease in April 2013 and again in February 2016. In February 2016, VRS remodeled its existing space to add cubicles, a conference room, and a kitchen area for employees. VRS is without knowledge as to any alterations, renovations, or additions made prior to its tenancy in 2009.

Under the lease, VRS has the right to install, place, and maintain all business fixtures, equipment, and furniture necessary and required for its use in the conduct of its business. It also has the right to remove business fixtures, equipment, and furniture upon termination of the lease. Aside from fixtures, VRS may only make alterations, additions, repairs, or improvements to the leased premises with the approval of the landlord. Since entering into the leasehold in 2009, there have been no changes to FSSA's property rights over the use of the VRS office in Valparaiso, Indiana.

Claimed Accessibility Issues

According to the Complainant, the Valparaiso office of the VRS has the following accessibility issues:

1. The building parking lot lacks proper signage.
2. The ramp to the building's front entrance lacks a railing.
3. There is not sufficient clearance to allow the front entrance doors to open while a person is on the landing in front of the entrance in a wheelchair, and there is no rail behind the clearance to prevent one from falling off of the landing.
4. The door to the main office cannot be opened by a person in a wheelchair without assistance and the path through the office is not accessible.

5. The conference room in the office is not accessible from the outside and lacks an accessible table for a person using a wheelchair.

The Complainant also alleged that the VRS failed to provide him XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX for use in the Valparaiso office's conference room.

According to the VRS, the international symbol of access is painted on the ground on the two accessible parking spaces at the Valparaiso office. VRS reported that the hallways and doors in the facility are 41 inches wide, with two hallways measuring 58 and 48 inches, respectively. VRS stated that it cannot report reliable measurements as to the right angle turns in the hallways and the width of the doors when door sills are taken into account. VRS also provided OCR additional information about planned efforts to remedy various issues raised by the Complainant.

Before OCR conducted an on-site visit to the Valparaiso office or otherwise completed its investigation, VRS requested to resolve this complaint with OCR by entering into a resolution agreement pursuant to Section 302 of the *CPM*.

Section 302 of the *CPM* states,

Allegations and issues under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation. . . . OCR will monitor the implementation of the agreement until the recipient has fulfilled the terms of the agreement and is in compliance with the statute(s) and regulation(s) at issue in the case.

On June 23, 2017, VRS executed the enclosed Resolution Agreement, which, when fully implemented, will resolve the compliance concerns raised by the Complainant in this complaint. The provisions of the Resolution Agreement are aligned with the issues raised in this complaint and the information obtained during OCR's investigation and is consistent with the applicable regulations. OCR will monitor VRS's implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. It should not be interpreted to address VRS's compliance with any other regulatory provision or to address any issues other than those addressed herein. 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 file a private suit in federal court whether or not OCR finds a violation.

Please be advised that VRS may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will

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seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

OCR thanks VRS, and particularly attorney Scott Newton, for its cooperation in responding to this complaint. If you have any questions please contact Jackie Wernz at (312) 730-1486, or by email at jacqueline.wernz@ed.gov.

Sincerely,

Ann Cook-Graver
Supervisory Attorney

Enclosure

CC: Mr. Scott Newton, FSSA – Office of General Counsel (by email only)