



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

XXXX

*Via Email/bremory@wsfcs.k12.nc.us*

Beverly Emory  
Superintendent  
PO Box 2513  
Winston-Salem, NC  
27102-2513

Re: OCR Complaint No. 11-16-1778  
Letter of Findings

Dear Dr. Emory:

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 XXXX against Winston-Salem/Forsyth County Schools (the District). The Complainant filed the complaint on behalf of individuals with disabilities who attend programs at XXXX (the School). The Complainant alleges that the District discriminates against individuals with disabilities because the School's gymnasium (the Gym), and the programs held within this facility, are not accessible to them. Specifically, the complaint alleges the following concerns about the accessibility of the Gym:

1. The ramp that leads into the Gym is long, hazardous, and deteriorated, rendering it unsafe for individuals with disabilities.
2. The two designated handicapped parking spaces are not close enough to the Gym entrances.

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, including public education systems and institutions, regardless of whether they receive Federal financial assistance from the Department. Because the District 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 District and conducted a site visit on XXXX.

After carefully considering all of the information obtained during the investigation, OCR found the District out of compliance regarding Allegation 1, which the District agreed to resolve through the enclosed resolution agreement pursuant to Section 303(b). OCR found insufficient

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by fostering educational excellence and ensuring equal access.*

evidence to support Allegation 2, as articulated in the initial complaint, pursuant to Section 303(a). However, in the course of our investigation, OCR identified additional compliance violations regarding the School's designated accessible parking spaces and accessible routes to the Gym, which the District agreed to resolve through the enclosed resolution agreement pursuant to Section 303(b).

OCR's findings and conclusions are discussed below.

### **Background**

The Complainant alleged that the Gym, and the programs held within this facility, are not accessible to individuals with disabilities. In particular, the Complainant described the ramp leading to the Gym as long, hazardous, and deteriorated, rendering it unsafe for individuals with disabilities. The Complainant further claimed that the two handicapped parking spaces designated for those accessing the Gym were not close enough to the Gym entrances.

### **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 District's programs or activities because the District'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 District'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 District 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 District 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 District 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 District 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 District 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, the District 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 school districts 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 school districts 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 school district 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**

XXXX, constructed in 1929, is a free standing brick structure. The Gym is a separate, free standing brick structure constructed in 1959 on the land to the southeast of the main school building. The District provided OCR with information about renovations and improvements to both buildings since the dates of their original construction. In 1995, the District renovated the main school building, adding a new wing to the original structure. As a part of that renovation, the District added modifications intended to improve accessibility, including an elevator within the main building, an additional accessible entrance on the southern (or back) side of the building, and two new designated accessible parking spaces adjacent to the southern (or back) side of the building. According to the District, the accessible parking spaces at the rear and the front of the School, and along the road from the main street to the rear of the School, were last resurfaced in 1995. In 2002, a cement walkway was installed to link the southern-most accessible parking spaces to the Gym. This route was also intended to create an accessible path from the main school building to the Gym. In May 2016, the District removed an external walkway on the northern point of the Gym that was not meant to be ADA accessible. The District asserts that these are the only modifications or improvements to the site since 1959.

The District did not provide documentation confirming the date of last resurfacing for the parking lot across the street from the main School building or the parking lot next to the Gym and the School buildings (now designated “bus only”). However, the District represented to OCR that these parking areas were last resurfaced at some point in the 1980s based on a copy of a 1986 site plan that reflects these paved parking areas.

OCR determined based on this information that the Gym is original construction from 1959; therefore, the accessibility standard for the Gym under 34 C.F.R. §104.22 is program access. Based on the information provided by the District, the accessible parking and route leading to the Gym were altered in a manner that affects the usability of these facilities after January 18, 1991; therefore, they must meet the requirements of the Uniform Federal Accessibility Standards (UFAS) or a standard that provides substantially equivalent or greater access and usability. The District identified the 1991 ADA Standards as the applicable design standards governing the alternations and modifications made in 1995 and 2002.

OCR learned during the investigation that various programs, activities and events are held in the Gym. During the instructional day, regular physical education and health classes take place in the Gym. School athletic programs practice in the Gym. The School also uses the Gym for intramural activities and interscholastic competitions. Occasionally, the Gym serves as the meeting space for school-wide assemblies, meetings and other school functions.

Additionally, OCR made an on-site visit to consider many aspects of physical accessibility of the Gym’s parking, accessible routes, and ramps. Through our investigation, and based on measurements taken during the on-site visit, OCR identified a number of aspects that are not in compliance with the applicable regulations governing the accessibility of the Gym.

### **1. Accessible Routes to the Gym**

Pursuant to the 1991 ADA Standards, at least one accessible route must be provided from accessible parking spaces to an accessible building entrance. ADAAG §§4.1.2(1), 4.1.6(3), 4.3.2. Similarly, at least one accessible route must connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site. ADAAG §§4.1.2(2), 4.3.2. To the maximum extent feasible, accessible routes should coincide with the route for the general public. ADAAG §4.3.2(1). As explained below, OCR determined that there are no accessible routes to the Gym and the Gym does not have an accessible entrance.

#### **a. Cross Slope**

The cross slope of an accessible route cannot exceed 1:50 (2%) at any point. ADAAG §§4.3.7, 4.8.6. OCR measured the cross slope of the accessible route from the School to the Gym and from the designated parking spaces to the Gym at regular intervals, approximately every ten feet. The cross slope of the first segment of the route, from the accessible exit at the back of the School to the designated parking spaces, complies with the regulation. However, the cross slope of the next segment, the route from the designated parking spaces until the end of the handrail-lined section, exceeds the allowable cross slope, measuring 9.8% at the steepest point. The cross slope of the final segment, leading from the end of the handrail-lined path to the Gym’s accessible entrance, complies with the regulation. Nevertheless, the District is not in compliance

with this requirement with respect to the middle, and longest, segment of the identified accessible route.

**b. *Running Slope***

An accessible route with a running slope greater than 1:20 (5%) must meet the accessibility standards for ramps set forth in ADAAG §§4.8, 4.3.7. For a newly constructed ramp, the running slope cannot exceed 1:12 (8.3%). OCR measured the running slope of the accessible route from the School to the Gym and from the designated parking spaces to the Gym at regular intervals, approximately every ten feet. At each point, OCR recorded the running slope on the left, middle, and right sides of the route. The running slope of the first segment of the route, from the accessible exit at the back of the School to the designated parking spaces, does not exceed 5% at any point and therefore does not constitute a ramp. However, OCR determined that the route leading from the designated parking spaces at the back of the School to the end of the installed handrails constitutes a ramp as the running slope exceeds 5% at points throughout the route. Hereinafter, OCR will refer to this ramp as “Ramp 1.” The sloped segment of about 10 feet leading up to the Gym’s accessible entrance constitutes a separate ramp. Hereinafter, OCR will refer to this ramp as “Ramp 2.” A cement pathway approximately 30 feet long separates these two ramps; this section’s running slope does not exceed 5% at any point. The running slope of Ramp 1 exceeded the 1:12 (8.3%) standard at several points, measuring as much as 11%. The running slope of Ramp 2 exceeded the 1:12 (8.3%) standard at only one point, measuring 9.2% in the center of the ramp at approximately 58 in. from the base of Ramp 2. Measurements taken at eight other points along Ramp 2 did not exceed 8.3%, ranging from 5.1% to 8.3%. Given that the running slope of both Ramp 1 and Ramp 2 exceeded the standard at certain points, the District is not in compliance with this requirement.

**c. *Width of Doors on Accessible Routes***

Doors along an accessible route must have a clear opening of at least 32 in. with the door open at 90 degrees. ADAAG §§4.13.5, 4.3.9. The accessible entrance to the Gym consists of a double-leaf doorway that is 55 in. wide when both door leaves are open. However, pursuant to ADAAG §4.13.4, at least one door leaf must meet the minimum width requirement. OCR measured the opening when one of the leaves is open at 28 in. wide.<sup>1</sup> As such, the District is not in compliance with this requirement.

**d. *Door Maneuvering Clearance***

If a door is not automatic or power-assisted, a level and clear maneuvering clearance must be provided. ADAAG §§4.13.6, 4.8.4(4). Individuals entering through the Gym’s accessible entrance approach the pull side of the door from the front by way of the current ramp. This type of entryway requires a level maneuvering clearance space of at least 60 in. leading to the doorway; no such clearance space is currently provided at the Gym entrance. As such, the District is not in compliance with this requirement.

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<sup>1</sup> The door leading from the back of the School to the Gym is 33 in. wide when open and as such meets this requirement.

***e. Route from public transportation, passenger loading zones, and public streets and sidewalks***

In addition to providing accessible routes from the School to the Gym and from the accessible parking spaces to the Gym, there must also be at least one accessible route within the boundary of the site from public transportation stops, passenger loading zones, and public streets and sidewalks to the Gym's accessible entrance. ADAAG §4.1.2(1). There are no such routes at the School site. Specifically, an individual with a disability would have to travel along a vehicular route or through the School building, which is not accessible at the times of Gym programming that occurs outside of regular school hours on weekday evenings or weekends.

**2. Distance of Accessible Spaces from the Gym's Entrance**

OCR investigated the location of the accessible parking spaces in relation to the Gym. According to the 1991 Standards, which governs all four indicated accessible spaces at the School site, accessible parking spaces do not need to be provided in a particular lot provided by the School as long as the designated spaces are provided in a different location that offers the same or greater accessibility in terms of distance from an accessible entrance and convenience. ADAAG §§4.1.2 (5)(a), 4.6.2. Moreover, the regulations require that accessible parking spaces be located closest to the accessible entrances for buildings, such as the School, with multiple accessible entrances.

The Gym has a single entrance on the northern side, however, the main entrance is located at the southwest corner of the building. The main entrance to the Gym involves a foyer space with double door entrances on both sides. The double door entrances on the northern side connect to the inaccessible route between the School and the Gym; the double door entrances on the southern side connect to the identified accessible route between the School and the Gym as well as between the Gym and two of the designated accessible parking spaces adjacent to the School.

The two accessible spaces at the rear of the School are the closest spaces to the only "accessible" route to the Gym, and as such, there is no concern about the distance of these spaces from that entrance. For this reason, OCR found insufficient evidence to support Allegation 2, as specifically articulated in the initial complaint, pursuant to Section 303(a). However, as discussed above, the identified route is not accessible, and the District does not presently offer *any* accessible spaces on an accessible route to this building.

**3. Assessment of Designated Accessible Parking Spaces**

During our investigation, OCR assessed the District's compliance with respect to the availability and location of designated accessible parking spaces. The District provides a total of 81 parking spaces for self-parking by employees and visitors, located in three different areas of the School site.<sup>2</sup> Pursuant to the 1991 ADA Standards, if parking spaces are provided for self-parking by

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<sup>2</sup> Of note, OCR is not considering the designated "bus only" lot adjacent to the Gym in our analysis. This particular parking area is on top of a hill close to the northern side of the Gym, connected to the School by an outside walkway. The District maintains that there is no public use of this lot for self-parking. According to the District, the lot was last resurfaced in the 1980s and has been continuously limited to use by buses only. The District informed OCR that until recently the lot served as a storage location for District-owned buses when not in use. Now, the lot serves as a loading area for buses. During our site visit, OCR noted signs at two entrances into this lot indicating "Bus Only." A sign reading "No Trespassing Violators Will Be Prosecuted" hangs above one of the signs indicating

employees or visitors, or both, then accessible spaces complying with the regulations must be provided in each such parking area. As explained in Advisory 208.2, “the number of parking spaces required to be accessible is to be calculated separately for each parking facility; the required number is not to be based on the total number of parking spaces provided in all of the parking facilities provided on the site.” We will address each distinct parking area in turn.

***A. Parking Area Across the Street from Main School Entrance***

According to representations made by District counsel, the parking area across the street from the main school entrance has not been resurfaced, or otherwise modified, since the mid-1980s. As such, this parking area was altered at some point after 1977 but prior to 1991, and must comply with the American National Standards Institute (ANSI) Standards (A117.1-196, reissued 1971) pursuant to Section 504 requirements.

Pursuant to ANSI, “[s]paces that are accessible and approximate to the facility should be set aside and identified for use by individuals with physical disabilities.” ANSI §4.3.1. ANSI allows for discretion in determining the number of accessible spaces to make available for individuals with disabilities, and the distribution of these spaces, based on the frequency and persistency of parking needs for a particular building or facility. See ANSI §§2.13, 4.3.5. However, compliance with ANSI demands at least one accessible space to make all buildings and facilities used by the public, such as the School, accessible to individuals with disabilities.

OCR determined that this parking area, which contains approximately 61 spaces<sup>3</sup>, does not contain any designated accessible parking spaces. Nevertheless, the District indicated to OCR that it rectified this compliance issue in 1995 by installing two accessible parking spaces, adjacent to the front entrance of the main school building, during renovations and modifications of the School site. These two spaces are closer in location to the accessible entrance at the front of the School than the parking area across the street, and suffice to meet the ANSI requirement to have at least one accessible space for the corresponding parking area across the street.

While OCR did not have an issue with the number of accessible spaces provided for individuals utilizing the parking area across the street from the main entrance, OCR did identify several ways in which these spaces do not adhere to the 1991 ADA Standards, which were applicable at the time of construction and last resurfacing. These spaces measured 89 in. and 93 in. in width, thereby falling short of the 96 in. minimum width requirement. ADAAG §4.6.3. Moreover, at least one of the parking spaces must be designated as “Van Accessible,” with signage indicating

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“Buses Only.” Despite this, OCR received some contradictory information that this paved parking area is used after school hours by the public when accessing events in the Gym. Such use, based on the District’s representations and OCR’s own observations of the site, is not allowed. As such, OCR did not consider this potential parking area when analyzing the available self-parking areas for employees or visitors. Nevertheless, as a matter of technical assistance, if the District does in fact condone the use of this parking area for self-parking by the public to access events and programs at the School site, now or in the future, the District would be in violation of the governing accessibility standards for this parking area in its current state. The lot contains approximately twenty-seven parking spaces, none of which are designated as accessible. Under the applicable American National Standards Institute (ANSI) Standards (A117.1-196, reissued 1971) pursuant to Section 504 requirements, the District would need to provide at least one accessible parking space to ensure accessibility for individuals with disabilities.

<sup>3</sup> OCR notes that there were areas of pavement where lines were not visible due to deterioration but where vehicles may still park. As such, this parking area may have initially housed more than 61 spaces. However, for the purposes of this investigation, we considered only clearly delineated spaces.

such. ADAAG §§4.6.4, 4.1.2 (5)(b). Van accessible spaces must be served by an access aisle at least 96 in. wide. Neither of the two spaces provided at the front of the School meet the van accessibility requirements.

***B. First Parking Area Along the Road from the Public Street to the Rear of the School Building***

According to representations made by District counsel, the first parking area along the road from the public street to the rear of the School was last resurfaced at the time of initial construction in 1995. This area houses ten adjoining spaces, none of which is designated as accessible. In accordance with the 1991 Standards, the District must provide at least one accessible parking space for this parking area. ADAAG §4.1.2(5)(a). The required accessible spaces may be provided in the same area, or in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured. ADAAG §4.1.2(5)(a). Thus, one of the existing accessible spaces at the rear of the School could serve this parking area as the spaces are closer in proximity to accessible entrances to both the School and the Gym. However, the Standards further require that at least one space serving this parking area be designated as “Van Accessible” and meet the corresponding width and access aisle requirements. ADAAG §§4.6.4, 4.1.2 (5)(b). None of the existing accessible spaces at the School site fulfill this requirement.

***C. Second Parking Area Along the Road from the Public Street to the Rear of the School Building***

The second parking area along the road from the public street to the rear of the School was also last resurfaced in 1995 at the time of initial construction. This area contains six spaces in total, five of which border the side of the road consecutively and one of which is placed on the opposite side of the road in the same location. None of these spaces are designated as accessible. The analysis described above for the first parking area applies to this second area; the District does not have a designated “Van Accessible” space serving this area. ADAAG §4.1.2 (5)(a)-(b).

***D. Signage***

**1. Signage for Accessible Parking Spaces**

Accessible parking spaces must be designated as reserved by a sign showing the symbol of accessibility; this sign must be located so it cannot be obscured by a vehicle parking in the space. ADAAG §4.6.4. The District has marked each accessible parking space with the symbol of accessibility on the pavement itself as well as by mounting signs near the spaces. These mounted signs are required by the regulations, and must be mounted high enough above the ground in front of each parking space such that the sign can be seen from a driver’s seat. The single sign mounted on the School building near the two accessible spaces at the rear of the School does not meet these requirements.

**2. Directional Signage to Accessible Entrances**

When not all entrances to a building are accessible, the inaccessible entrances must have directional signage to indicate the route to the nearest accessible entrance. ADAAG §4.1.2 (7)(c). OCR noted that there were no signs indicating the availability of accessible parking spaces for the accessible route into the Gym. Located behind the School, these two spaces are obscured



from the street, from the larger parking lot for the School, and from the accessible spaces at the front of the School. Moreover, the District does not provide signage indicating the location of the Gym's accessible entrance along any of the possible routes to the Gym. As such, the District is not in compliance with this requirement.

### **Conclusion**

OCR concludes, therefore, that the District is not in compliance with the Section 504 regulation, at 34 C.F.R. §104.22, and the Title II regulation, at 28 C.F.R. §35.150, with respect to the programs and activities held within the Gym. The District is also not in compliance with 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), with respect to the School site facilities constructed in 1995 and 2001.

As noted earlier, to come into compliance with Section 504 and Title II, on date, the District agreed to implement the enclosed Resolution Agreement (Agreement), which commits the District to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the District 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 District deemed compliant if the District enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the District'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 District 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 District on May 31, 2018, if the District 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 District 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 District'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 District 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 District's cooperation in the resolution of this complaint. If you have any questions, please contact Megan Rok, the OCR attorney assigned to this complaint, at 202-453-6978 or [megan.rok@ed.gov](mailto:megan.rok@ed.gov).

Sincerely,

/s/

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

Enclosure

cc: Dionne T. Jenkins, Esq., General Counsel