



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

January 31, 2019

Via Email knicely@rcs.k12.va.us

Dr. Ken Nicely
Superintendent
Roanoke County Public Schools
5937 Cove Road
Roanoke, VA 24019

RE: OCR Complaint No. 11-18-1439
Resolution Letter

Dear Dr. Nicely:

This letter is to advise you of the outcome of the complaint that the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) received on August 7, 2018 against Roanoke County Public Schools (the Division). The Complainant alleges that the Division discriminated against individuals with disabilities by failing to provide adequate accessible parking at Northside High School (the School).

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

Before OCR completed its investigation, the Division expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement. Because the Complainant's concern was that the Division did not provide adequate designated accessible parking spaces closest to the main front accessible entrance, OCR limited its investigation to the accessible parking provided to primarily serve this entrance. Following is a summary of the relevant legal standards and information obtained by OCR during the investigation.

Background

OCR requested information about the School entrances utilized for special events, such as back-to-school nights, the accessibility standard that was applied for construction or alteration of the parking lots, and the number of parking spaces contained in the School's front lots. According to information the Division provided in its data response, the School underwent a significant renovation and construction project in 2007. During this 2007 project, the Division indicated that the parking lots were stripped and redone. The Division did not identify what accessibility standard it utilized in 2007 when it reconstructed the parking lot. OCR did not conduct an onsite visit, since enough information regarding the location of accessible parking spaces was provided in the Division's data response, the complete parking layout was also available via the Internet, and the Division requested to resolve the complaint.

Legal Standard

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, District's 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 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 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 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.

Applicable Accessibility Standard

Because the Division did not identify which accessibility standard it used to determine the number of accessible parking spaces at the School, OCR utilized both the UFAS and the ADAAG standard in order to determine compliance. The pertinent provisions of the UFAS and ADAAG are comparable. In this letter, OCR has applied UFAS, which is the earlier of the applicable compliance standards. OCR notes, however, that in bringing the School into compliance, the Division will have to remedy any violations and concerns consistent with the 2010 Standards.

Analysis

In its response to OCR, the Division indicated it has approximately 403 parking spaces. However, OCR's review of the data shows that these parking spaces are located in multiple lots that serve different entrances to the school. The Division has indicated that it currently has one accessible parking space located in the front lot directly adjacent to the School's main front accessible entrance, which is the closest lot to this entrance (Front Lot A). The District also has a second front lot at the front of the School that also serves the main front accessible entrance (Front Lot B). Because the Division did not provide the number of spaces in either of the two front lots, OCR calculated the approximate number of parking spaces in the front lots by estimation, utilizing the aerial map of the lots that the Division provided and Google maps. Utilizing this method, OCR estimated that the School has approximately 17 parking spaces

located in Front Lot A and 226 spaces located in Front Lot B. According to the Division data, Front Lot A has one accessible parking space and Front Lot B has five accessible parking spaces. From OCR's review of the Division's data response and Google maps, the five accessible spaces in Front Lot B are located the farthest distance in the lot from the main front accessible entrance and appear to be designated to serve the School's baseball field.

Front Lot A, which is the lot closest to the School's main front accessible entrance, technically meets the requirements for the minimum number of accessible parking spaces. Parking lots with less than twenty-five spaces are required to have a minimum of one accessible space. UFAS 4.1.2. However, after carefully considering all of the information obtained during the investigation, OCR has concerns regarding the availability of accessible parking in Front Lot B. UFAS requires Front Lot B to have a minimum of seven accessible parking spaces. UFAS 4.1.1. UFAS requires that when more than one parking area is provided on a site, the number of accessible spaces provided must be calculated according to the minimum number of spaces required for *each* parking area (emphasis added) unless greater accessibility is achieved. UFAS 4.1.1. OCR has concerns that the accessible parking spaces in Front Lot B are not located on the closest accessible route to the School's main accessible front entrance (the closest entrance to this lot). UFAS requires that the minimum number of accessible parking spaces that serve a particular building be located closest to the nearest accessible entrance on an accessible route. UFAS 4.6.2. As discussed, Front Lot B only contains five accessible spaces, which is two less than the minimum of seven accessible spaces that are required and they are located the farthest distance from the School's main front accessible entrance. Front Lot A has one accessible space. Thus, the School does not appear to provide the minimum number of accessible parking spaces closest to the School's main front accessible entrance. Unless a lot qualifies for an exception, parking lots with 201-300 spaces are required to have a minimum of seven accessible spaces located on an accessible route closest to the accessible school entrance that it serves. UFAS 4.1.2 and 4.6.2.

The Division has indicated that it will provide adequate accessible parking spaces, including van accessible parking spaces, that serve the School's main accessible front entrance in compliance with the 2010 Standards. The accessible parking spaces will be located in Front Lot A, the lot directly adjacent to the School's main front accessible entrance and contain a minimum of seven accessible spaces. Although, the Division is not designating any additional accessible spaces in Front Lot B, the Division is maintaining the five accessible spaces it already has in Front Lot B. Thus, because the Division is maintaining the five accessible spaces it already has in Front Lot B, the Division will have a total of twelve accessible spaces in the two front lots. Thus, with the seven accessible spaces it is providing in Front Lot A, the total number of accessible spaces in both front lots will exceed the required minimum number of spaces in Front Lot A and B combined. The 2010 Standards provide an exception¹ that parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is

¹ The 2010 Standards state that, where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility. The 2010 Standards advise that the number of parking spaces required to be accessible is to be calculated separately for each parking facility and 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.

provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience. 2010 Standards 208.31, Exception 2.

Prior to OCR completing its investigation of whether the Division provides adequate accessible parking for the School's main front accessible entrance, the Division requested to resolve this complaint through a resolution agreement. Thus, OCR has not determined that the measurements of the accessible spaces are in compliance with either the UFAS Standards or whether the accessible parking is located on an accessible route.

Pursuant to Section 302 of OCR's *Case Processing Manual*, the Division signed the enclosed Resolution Agreement on January 29, 2019 which, when fully implemented, will resolve the allegation raised in this complaint. The provisions of the Agreement are aligned with the allegation and issues raised by the Complainant and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. OCR will monitor the Division's implementation of the Agreement until the Division has fulfilled the terms of the Agreement.

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, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

We appreciate the Division's cooperation in the resolution of this complaint. If you have any questions, please contact Jan D. Gray, the OCR attorney assigned to this complaint, at 202-453-6028 or Jan.Gray@ed.gov.

Sincerely,

Kristi Harris
Supervisory Attorney, Team IV
District of Columbia Office
Office for Civil Rights

Enclosure

cc via email: XXXX. Reed Smith LLP, Division's Counsel