



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

October 30, 2018

Dr. Gary Green  
President  
Forsyth Technical Community College  
2100 Silas Creek Parkway  
Winston Salem, North Carolina 27103

Re: OCR Complaint No. 11-18-2219  
Letter of Findings

Dear Dr. Green:

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 May 7, 2018 against Forsyth Technical Community College (the College).<sup>1</sup> The Complainant alleges that the College discriminates against individuals on the basis of disability. Specifically, the complaint alleges that “Parking Lot X” and “Parking Lot B” on the College’s main campus are inaccessible to individuals with disabilities.

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

During the investigation, OCR reviewed documents provided by the Complainant and the College; interviewed the Complainant; and conducted a site visit on September 10, 2018.

After carefully considering all of the information obtained during the investigation, OCR found sufficient evidence of a violation of Section 504 and Title II regarding the allegation related to Lot B. However, OCR is dismissing allegations related to Lot X. OCR’s findings and conclusions are discussed below.

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<sup>1</sup> On May 4, 2018, the Disability Rights Section, Civil Rights Division, of the U.S. Department of Justice (DOJ) referred the Complainant’s original complaint to OCR, which was received by DOJ on April 17, 2018.

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

## **Background**

According to the Complainant, the College discriminates against individuals with physical mobility issues by not providing adequate accessible parking. Specifically, the Complainant explained that Lots “X” and “B” do not have an adequate number of handicap accessible parking spaces, that the spaces that are provided are too far away from the building, and that the closer spaces are inaccessible because they are located in a gated “employee” designated area of the parking lot.

According to the College, Parking Lot B was built in 1992 and repaved in 2017. It is broken up into two parking areas; one area has 12 regular parking spaces with 8 handicap parking spaces (totaling 20 spaces) and the other, which is “gated,” has 23 regular parking spaces and one handicap spot (totaling 24 spaces). College staff informed OCR that the gated area is primarily used for employee parking, and that specific employees have a code to access the parking area.

In regards to Lot X, the College told OCR that it was initially constructed in the 1970s. The lot had 21 regular parking spaces and did not include any handicap accessible spots. However, as of August 28, 2018, it is no longer in use for employee parking due to a construction project. While visiting the College, the Manager of Facilities and Construction told OCR that the lot will not be used for employee or general parking while the construction project is being completed, which could take 4-5 years.

**Allegation 1:** *That “Parking Lot X” and “Parking Lot B” on the College’s main campus are inaccessible to individuals with disabilities.*

## **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 college’s programs or activities because the college’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 college’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 college 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 College 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 College 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 College 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 College 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, colleges 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 colleges 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 colleges 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 college 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

#### **Parking Lot X**

OCR is dismissing the portion of the allegation related to Lot X under Section 108(u) of OCR's *Case Processing Manual* because we determined that the component of the allegation is moot. An allegation is moot if it is no longer possible to obtain a remedy for the alleged discrimination.

During an on-site visit to the College, OCR confirmed that Lot X was no longer in use for general parking. While at the College, OCR observed that one end of the lot had fencing going

across the entire parking lot and a gated entrance at the other end. The gated entrance had signs stating that unauthorized vehicles will be towed and the lot only contained construction vehicles and the College's maintenance fleet. College staff further informed OCR that the lot would be ripped up and would cease to exist. Accordingly, because Lot X will no longer be in existence, OCR is unable to obtain a remedy for the alleged discrimination, and it will take no further action with respect to this portion of the allegation.

## **Parking Lot B**

The College told OCR that the lot was repaved in 2017. Accordingly, OCR applies the 2010 Standard when reviewing Lot B.

### *Adequate Number of Accessible Parking Spaces*

Under §208 of the 2010 Standards, if the College provides parking, then accessible spaces need to be provided. OCR determined that Lot B has a total of 44 spaces, separated into two distinct areas for parking: one area that is available for all visitors ("Non-Gated Lot B") and a gated area that can only be accessed only by individuals who are privy to a numerical code that is controlled by the College ("Gated Lot B").<sup>2</sup> §208.2 of the 2010 Standards requires that parking facilities with 1-25 parking spaces have 1 accessible spot. OCR determined that Non-Gated Lot B contains 20 spaces with 8 spots marked as handicap accessible. OCR further determined that Gated Lot B contains 24 spaces with 1 space marked as handicap accessible. Accordingly, OCR finds that each lot independently meets or exceeds the 2010 ADA Standard requirements for the number of designated spaces.<sup>3</sup>

§208.2.4 requires that for every six or fraction of six parking spaces required by §208.2, at least one shall be a van parking space complying with §502. Accordingly, since Non-Gated Lot B and Gated Lot B includes a fraction of six parking spaces (one out of six for each lot), it must also include one van parking space per lot. As discussed in more detail below, OCR was unable to find a parking spot that met the requirements necessary for van parking for either of the lots.

§502.2 requires that car parking spaces be, at a minimum, 96 inches wide, and van parking spaces shall be 132 inches wide, at a minimum, and that each shall have an adjacent access aisle complying with §502.3. OCR found that six of the spaces were 96 inches wide, two are 104 inches wide, and one was 103 inches wide. As such, all spaces meet the width requirements of spots designated for cars. OCR did not find, however, that either Non-Gated Lot B or Gated Lot B contained a parking space that met the width requirements necessary for a van under §502.2.<sup>4</sup>

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<sup>2</sup> Although Lot "B" is designated as one visitor parking area on the College's map and serve the same building, OCR reviewed the lot and determined that they are in fact separate parking lots. This is because only individuals with the numerical code can have access to the parking spaces that are gated. The general public only has access to those spots outside of gated area, indicating that the two lots are not contiguous.

<sup>3</sup> OCR notes that while the College was only required to have two spots in this lot, because it is holding itself out to have 9 spaces, OCR will review each space to make sure it is otherwise consistent with the 2010 Standards.

<sup>4</sup> OCR recognizes that the §502.2 allows van parking spaces to be 96 inches wide if the adjoining access aisle is 96 inches wide. However, as discussed later in the analysis, none of the access aisles are wide enough to trigger this exception.

§502.4 requires that each parking space have a slope no greater than 1:48, or a 2.08% grade. OCR took multiple measurements for each space, finding that all 8 of the spaces in Non-Gated Lot B had average slopes below or near 2.08. However, it found that the 1 handicapped space in Gated Lot B had average slopes that 3.42%, which is not compliant with the 2010 ADA Standards.

Ultimately, OCR found sufficient evidence to show that both Non-Gated Lot B and Gated Lot B are in violation of §208.2.4 of the 2010 standards, which requires that if accessible parking spaces are required under §502 then at least one be van accessible. It also found that the handicapped parking space in Gated Lot B is not in compliance with §502.4, which requires a ground surface slope of each space to be no greater than 1:48.

#### *Access Aisles*

§502.3 and §502.3.1 of the 2010 ADA Standards requires that each accessible space have an access aisle adjacent to it that is 60 inches wide. Two parking spaces are permitted to share a common access aisle. OCR identified three areas marked as access aisles in Non-Gated Lot B, and one marked access aisle in Gated Lot B. It determined that 6 of the 9 spots were adjacent to one of these access aisles. The remaining three parking spaces, all of which were located in Non-Gated Lot B, were not adjacent to an access aisle. One access aisle measured 57 inches wide, while the remaining three access aisles were at or about 60 inches wide; accordingly, OCR found that one of the four access aisles was not in compliance with §502.3.1. Consistent with §502.3.2 and §502.3.3, these access aisles all extended the full length of the parking space and were marked to discourage parking.

§502.4 requires that each access aisle must be stable, firm, and slip resistant. Additionally, they must not have a slope greater than 1:48, or a 2.08% grade. OCR measured the slopes of each access aisle and found that all three of the access aisle in Non-Gated Lot B had slopes that ranged from 1.72% to 2.01% and were in compliance. However, the one access aisle in Gated Lot B had a slope of 3.32%, and was thus not in compliance. OCR did find that the ground of all access aisles was stable, firm, and slip resistant. Ultimately, however, OCR found sufficient evidence that Lot B was in violation of §§ 502.3 and 502.4 of the 2010 Standards due to concerns with the width and slope of some of the access aisles.

#### *Accessible Routes*

In regard to accessible routes, §208.3.1 requires that each spot is to be located on the shortest accessible route of travel from the parking facility to an accessible entrance. During its onsite inspection, OCR confirmed that the handicapped parking spots in both lots were located on the shortest route to the Allman Center.

OCR did not observe any clear concerns with the accessibility of the routes to the entrance. Additionally, the Complainant did not identify any such concerns with the route.

### *Identification*

§502.3.3 requires that the accessible spaces are marked so as to discourage parking in them by those without disabilities. Under §502.6, there needs to be signage sixty inches above the finished floor with the symbol of accessibility and for van accessible spaces signage should also denote that. OCR found that Lot B met these requirements. Each space was clearly marked and there was signage on metal sign posts at least 60 inches above the surface of Lot B. OCR notes that none of the spaces marked as handicap accessible are marked as being van accessible.

### **Conclusion**

On October 29, 2018, the College agreed to implement the enclosed Resolution Agreement (Agreement), which commits the College to take specific steps to address the identified areas of noncompliance. The Agreement entered into by the College 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 College deemed compliant if the College enters into an agreement that, fully performed, will remedy the identified areas of noncompliance (pursuant to Section 303(b)). OCR will monitor closely the College'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 College 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 College on October 29, 2018, if the College 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 College 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 College'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 College 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 College's cooperation in the resolution of this complaint. If you have any questions regarding this letter, please contact Eugene Sowa, the OCR attorney assigned to this complaint, at 202-453-6869 or [eugene.sowa@ed.gov](mailto:eugene.sowa@ed.gov).

Sincerely,


David Hensel  
Team Leader, Team III  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: XXXX, Manager Facilities/Construction


**APPENDIX****Parking Facilities<sup>5</sup>****Lot “B” (Allegation 1)**

Parking Lot B was built in 1992 and repaved in 2017. It is divided into two parking areas, where one is separated by a gate that can be raised or lowered by punching in a numerical code. The ungated area has a total of 20 spaces, 12 regular parking spaces and 8 handicap parking spaces. The gated area has 24 total spaces, 23 regular parking spaces and one handicap spot. College staff informed OCR that the gated area is primarily used for employee parking, and that specific employees are given the code in order to access the parking area. The general public does not have access to the gated area.

<b>Parking Facility</b>	<b>Lot “B” – Ungated Area:</b> The ungated area of Lot “B” contains two rows of spaces, one along the western most side of the lot and another along the north sides of the lot. All of the spaces on the north side of the lot are designated as handicap acceptable. These spaces are hereinafter referred to as Spot 1 through Spot 8, where Spot 1 is the furthest spot from the Allman Center (the spot in the northwest corner) and Spot 8 is the one closest to the Allman Center’s western facing entrance. There are three access aisles adjacent to Spots 4-8. A curb ramp is located roughly 30 feet south and east from the spot closest to the Allman Center that allows a person using a wheelchair access to the buildings western entrance.		
<b>Pictures</b>			
<b>Construction</b>	1992; altered in 2017		
<b>Applicable Standard(s)</b>	§208; §502		

<sup>5</sup> Citations for this section of the appendix are to the 2010 ADA Standards.

<b>Accessibility Issues</b>	<p>Access Aisles</p> <ul style="list-style-type: none"> <li>Spots 1, 2, and 3 do not have an access aisles adjacent to them [§502.3 and §502.3.1. require that each handicap accessible spot have an access aisle adjacent to it]</li> <li>The access aisle adjacent to Spot 8 is 57 inches wide [§502.3.1 requires access aisles to be no less than 60 inches wide]</li> </ul> <p>Van Accessible Spaces</p> <ul style="list-style-type: none"> <li>The ungated area does not have a van accessible parking space [§208.2.4 requires that for every six or fraction of six parking spaces required by §208.2, at least one shall be a van parking space complying with §502]</li> </ul>
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<b>Parking Facility</b>	<p><b>Lot “B” – Gated Area:</b> The gated area of Lot “B” contains two rows of spaces, one along the western most side of the gated area and another along the east side of the lot. The gated area has one space designated as handicap accessible, and is hereinafter referred to as Spot 9. Spot 9 is the spot located in the northeast corner of the gated area. There is one access aisle adjacent to Spots 9. The access aisle connects directly to a curb ramp that cuts across a raised median. A curb ramp located roughly 20 feet directly east from Spot 9 allows a person using a wheelchair access to the buildings western entrance.</p>
<b>Pictures</b>	
<b>Construction</b>	1992; altered in 2017
<b>Applicable Standard(s)</b>	§208; §502

<b>Accessibility Issues</b>	<p>Van Accessible Spaces</p> <ul style="list-style-type: none"><li>• The gated area does not have a van accessible parking space [§208.2.4 requires that for every six or fraction of six parking spaces required by §208.2, at least one shall be a van parking space complying with §502]</li></ul> <p>Parking Space/Access Aisle</p> <ul style="list-style-type: none"><li>• Parking space running slope = 3.42% [§502.4 requires that each accessible space must have a slope no greater than 1:48, or a 2.08% grade]</li><li>• Access aisle running slope = 3.32% [§502.4 requires that each accessible space must have a slope no greater than 1:48, or a 2.08% grade]</li></ul>
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