



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

July 8, 2019

Via Email XXXXX

XXXXXX

Director

Cornerstone Charter Academy  
7800 Airport Center Drive  
Greensboro, North Carolina 27409

RE: OCR Complaint No. 11-19-1167  
Resolution Letter

Dear XXXXX:

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 January 15, 2019, against Cornerstone Charter Academy (the School). The Complainant alleged that the School discriminated against persons with disabilities. Specifically, the complaint alleges that multiple facilities at the school are inaccessible. These facilities and issues are:

1. The basketball court does not have any designated accessible seating.
2. There is no directional signage provided to the accessible entrance at the School.
3. The Playground lacks:
  - a) accessible ground surface; and
  - b) accessible equipment.
4. There is an inadequate amount of accessible parking spaces at the school. Including:
  - a) Not enough accessible parking spaces over all;
  - b) The accessible parking in the north area: (1) lacks vertical signage and (2) is not the correct width; and
  - c) The accessible parking in the south area is not the correct width.
5. The Athletic Fields lack:
  - a) Accessible parking;
  - b) Accessible paths of travel; and
  - c) Accessible seating.

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

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

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 School 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 interviewed the Complainant who provided pictures, reviewed documents provided by the School; conducted a site visit on March 18, 2019, and a follow up visit on May 14. Before OCR completed its investigation, the School expressed a willingness to resolve Allegations 3 and 5(b) pursuant to Section 302 of OCR's *Case Processing Manual*, which states that allegations may be resolved prior to OCR making a determination if the School expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. The following is a summary of the evidence obtained by OCR during the investigation to date.

The Complainant raised multiple accessibility concerns.

The building that houses the School was originally built in 1998. The School bought the entire property in 2015. They did a complete renovation starting in 2015. This involved a complete change of use for the 4-story building. This renovation included the addition of a gym. The athletic fields were also created in the 2015 renovation. Additionally, the playground was created after 2015 and was designed to meet the applicable physical accessibility requirements.

### **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 recipient's programs or activities because the recipient'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 recipient'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 recipient 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 recipient 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 recipient 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 recipient 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 recipient 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, recipients 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 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 recipients 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 recipient may use the 2010 Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 Standards applicable to public entities consist of the Title II regulations at 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, Appendices B and D.

Since all relevant construction was started after March 15, 2012, the only applicable standard is the 2010 Standard and is viewed as new construction.

### **Allegation 1**

With respect to Allegation 1, the Complainant alleged the basketball court does not have any designated accessible seating.

### **Applicable 2010 Standards**

Section 221 of the 2010 Standards identifies the minimum number of wheelchair spaces required in an assembly area, such as a gymnasium. Section 221 sets out other requirements for the seating

such as the width of each space and dispersion across both the vertical and horizontal access (§221.2.3 and § 221.2.3.2) and requirements for companion seats (§221.3). It should be noted there is also an exception to the vertical dispersion which does not require vertical dispersion in bleachers; it permits the accessible seats to be provided in rows at the level of the point of entry to the bleacher seating. (§221.2.3.2 Exemption 2).

Additionally, Section 802.1 sets out requirements for width of wheelchair spaces, companion seats and aisle seats. These requirements include dimensions for a single wheelchair space to be 36 inches wide. Two accessible seats next to each other can each be 33 inches wide. (§802.1.2). The accessible spaces need to be 48 inches deep if front to rear entry (§802.1.3). Section 802 has further requirements as to requiring wheelchair spaces to be on accessible routes (§802.1.4), cannot overlap circulation paths (§802.1.5) and vary lines of site including protections to ensure patrons don't stand to block the views of someone in a wheelchair. (§802.2). Finally, Section 802.3 requires companion seats with the wheelchair seats.

### Analysis

The Complainant said the School categorically does not provide wheelchair seats in the gymnasium. This is inaccurate. There are new bleachers that are notched to provide eight wheelchair spaces with companion seating if needed. The gymnasium seats 408. Under Table 221.2.1.1, the School needs to have at least 6 wheelchair spaces. The 8 spaces present meet or exceed the requirements stated as discussed above. Additionally, all the spaces meet the requirements set out in Section 221 and 802. Based on this information there is no evidence there is no accessible seating. The Complainant did not provide any detail as to what was missing, rather the complaint stated there was none. Based on this information OCR is closing Allegation 1 effective the date of this letter.

### **Allegation 2**

With respect to Allegation 2, the Complainant alleged there is no directional signage provided to the accessible entrance at the School.

### Applicable 2010 Standards

Section 216.6 of the 2010 Standards requires when there is an inaccessible entrance that does not meet Section 404 there should be signage denoting the closest accessible entrance that complies with Section 404. Section 404 sets out requirements for entrance width and that it is located on an accessible route.

### Analysis

The Complainant did not identify any inaccessible entrances. The School asserts all entrances are accessible. OCR could not identify any inaccessible entrances when visiting the School. There is no requirement to provide signage if all entrances are accessible. Based on this information OCR is finding insufficient evidence and is closing Allegation 2 effective the date of this letter.

### **Allegation 3**

With respect to Allegation 3, the Complainant alleged the Playground lacks: (a) accessible ground surface; and (b) accessible equipment.

#### **Applicable 2010 Standards**

The 2010 Standards have multiple requirements and definitions for playgrounds. A ground level play component is defined as *play component* that is approached and exited at the ground level. An elevated play component is a *play component* that is approached above or below grade and that is part of a composite play structure consisting of two or more *play components* attached or functionally linked to create an integrated unit providing more than one play activity.

The 2010 Standards at § 240.2.1 require ground level play components to be provided in the following numbers:

Number of elevated play components provided	Minimum number of ground-level play components required to be on accessible route	Minimum number of different types of ground-level play components required to be on 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
More than 25	8 plus 1 for each additional 3 over 25, or fraction thereof	5

The 2010 Standards at § 240.2.1.1 require at least one of each type of ground level play components to be on an accessible route. Additionally, Section 1008 of the 2010 Standards sets forth requirements for accessible routes connecting ground level play components and elevated play components.

Also, of note, the 2010 ADA Standards incorporate sections of the American Society for Testing and Materials (ASTM). Specifically, ASTM F 1292-04 covers play area use zone and fall attenuating surfaces. Additionally, ASTM F 1951-99 establishes a uniform means to measure the characteristics of surface systems in order to provide performance specifications to select materials for use as an accessible surface under and around playground equipment. The ASTM F standards provide specific testing standards to determine if the surface is firm, stable, and resilient to ensure the surface is safe and accessible to children who are playing.

### Analysis

When OCR arrived at the School for the site visit, the Director of the School (Director) told OCR that he planned to put a different ground surface material down. He said he had concerns about the accessibility and has elected to replace it before OCR could make an analysis of the current surface to determine if it met the ASTM standards. Based on this admission the School has requested a 302 agreement to resolve this part of the allegation.

Next OCR looked to determine if the play structure itself met the 2010 Standards. The structure has 5 high elements and 4 ground elements (each a different activity). Under § 240.2.1 the structure with 9 elements needs 3 ground with 3 different activities. The structure itself meets these requirements. However, because of the issues with the ground surface, OCR was unable to determine if the transfer platforms are installed properly at the correct height. As part of the above-mentioned agreement to install a new surface, they will ensure the equipment is installed properly too.

### Allegation 4

With respect to Allegation 4, the Complainant alleged, there is an inadequate amount of accessible parking spaces at the school. Including: (a) not enough accessible parking spaces over all; (b) the accessible parking in the north area: (1) lacks vertical signage and (2) is not the correct width; and (c) the accessible parking in the south area is not the correct width.

### Applicable 2010 Standards

Section 208 requires that if parking is provided then accessible spaces need to be provided. The amount of spaces is:

<b>Total Number of Parking Spaces Provided in Parking Facility</b>	<b>Minimum Number of Required accessible Parking Spaces</b>
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Each space is required to have an access aisle of sixty inches adjacent to it (§502.3). Additionally, one in six of the accessible spaces, but no fewer than one, is required to have an access aisle 96 inches wide (van accessible) (§208.2.4). Additionally, each spot is to be located on the shortest accessible route of travel from the parking facility to an accessible entrance (§208.3.1). Finally, 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 (§502.6).

### Analysis

During the first OCR visit to the School, March 18, 2019, there were issues with the parking lots regarding Parts B and C. OCR stopped by the School on May 14, 2019, to look at the parking lots. There were some changes to the lots by that date. Therefore, OCR is only analyzing the status of the parking on its second visit on May 14, 2019.

In the data response, the School said there were 630 spaces at the School. Of these, 21 are accessible. Based on the size, 13 are required to be accessible. The 21 spaces are spread over 6 different locations. All six areas have at least 1 access isle that created a van accessible space. All parking spaces have vertical signage. Additionally, the parking spaces in the south area are the correct width. The access isles are all proper width too. All parking is on an accessible route. The parking at the Athletic Field and its connection to an accessible route is covered in Allegation 5. Based on this there is insufficient evidence regarding Allegation 4.

### **Allegation 5**

With respect to Allegation 5, the Complainant alleged the Athletic Fields lack:

- a) Accessible parking;
- b) Accessible paths of travel; and
- c) Accessible seating.

### Applicable 2010 Standards

Section 402.2 requires 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. Further, Section 403.2 states floor or ground surfaces shall comply with 302. Section 302.1 requires floor and ground surfaces shall be stable, firm, and slip resistant. Additionally, Section 403.3, requires the running slope of walking surfaces not be steeper than 1:20. Section 403.3 also requires, the cross slope of walking surfaces not be steeper than 1:48. Finally, Section 403.5.1 requires the clear width to be at least 36 inches unless otherwise provided.

The Title II regulations at 28 C.F.R. §25.151(d) specifically states the accessibility standards apply to fixed or built-in elements of buildings, structures, site improvements, and pedestrian routes or vehicular ways located on a site.

### Analysis

As discussed in Allegation 4, there is adequate accessible parking.

When OCR was at the School there were some sidewalks and accessible paths of travel near the Athletic Fields. There were no paths of travel directly from the Athletic Fields to the closest accessible parking space. There was no path of travel for the last part of the travel to the Athletic Fields from the main School building. This path ended across the parking area from the Athletic Fields. On June 3, 2019, the School told OCR they would like to sign an agreement with regard to the path of travel to the field (Allegation 5(b)). This request was made because the time it was taking to get the new path of travel installed.

Finally, the last part of this allegation, alleges there is no accessible seating provided at the field. There is no fixed seating, therefore there is no requirement for accessible seating. OCR is finding insufficient evidence of a violation with regards to parts A and C of Allegation 5.

### Conclusion

On July \*\*, 2019, the School signed the enclosed Resolution Agreement which, when fully implemented, will address the Allegations 3 and 5b. The provisions of the Agreement are aligned with the allegations and the information obtained during OCR's investigation, and are consistent with applicable law and regulation. The Agreement requires the School to ensure the ground surface of the play area meets the ASTM standards incorporated into the 2010 Standards, ensure the structure is installed to meet the 2010 Standards, and to ensure the paths of travel to the field are consistent with the 2010 Standards. Please review the enclosed Agreement for further details. OCR will monitor the School's implementation of the Agreement until the School has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the School'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 School 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 School's cooperation in the resolution of this complaint. If you have any questions, please contact Jacob Griffith, the OCR attorney assigned to this complaint, at 202-453-5730 or [Jacob.Griffith@ed.gov](mailto:Jacob.Griffith@ed.gov).

Sincerely,

Ralph Suris  
Chief Regional Attorney  
District of Columbia Office  
Office for Civil Rights

Enclosure