



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

April 12, 2019

James E. Ryan  
President  
University of Virginia  
Madison Hall  
P.O. Box 400224  
Charlottesville, VA 22904-4224

Re: OCR Complaint No. 11-19-2006  
Resolution Letter

Dear President Ryan:

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 October 9, 2018 against the University of Virginia (the University). The complaint alleges that the University discriminated against individuals on the basis of disability. Specifically, the complaint alleges that:

1. Beginning with the spring 2018 baseball season, the University failed to provide accessible parking for patrons with disabilities attending games at the University's baseball stadium, Disharoon Park (the Stadium);
2. Beginning with the spring 2018 baseball season, the University no longer allowed patrons with disabilities to be dropped off in the parking lot with the closest proximity to the Stadium's elevators; and
3. The University's shuttle service from the designated pick up area for transportation of patrons with disabilities to the Stadium on game days is not accessible to patrons with mobility impairments who use wheelchairs.

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

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

### **Summary of Investigation**

During the investigation, OCR interviewed the Complainant, reviewed documents provided by the University, and conducted a site visit on March 5, 2019.

Before OCR completed its investigation, the University expressed a willingness to resolve Allegations 1 and 3 on March 19, 2019. OCR determined that it is appropriate to resolve Allegations 1 and 3 pursuant to Section 302 of OCR's *Case Processing Manual* because the investigation has identified issues that can be addressed through a resolution agreement. OCR also acknowledges that during the course of the investigation, the University has taken affirmative steps to ensure compliance with Section 504 and Title II.

Further, during the course of its investigation, OCR determined that Allegation 2 has been resolved by the University.

### **Facts**

During summer 2017, the University began a right field Stadium expansion project and alterations to the parking lots in closest proximity to the Stadium (i.e., the upper lot and the lower lot). As a result, during the spring 2018 season, parking access to the upper and lower lots, including the accessible parking in the upper lot, was limited to individuals who had received special permits based on donor status or who were involved in game day activities. In addition, during the spring 2018 season, the University did not allow drivers of private vehicles access to the upper lot closest to the Stadium to drop off patrons, including patrons with disabilities, even though the University had permitted the practice in previous seasons.

### **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 University 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.

Specifically, 28 C.F.R. § 35.151(b)(4) sets forth the requirements governing an accessible path of travel, including pedestrian ramps and parking access aisles. Likewise, Section 206 of the 2010 Standards governs accessible routes; Sections 208 and 502 govern parking spaces; Section 403 governs walkways, Section 405 governs ramps; and Section 505 governs handrails.

### **Allegation 1**

With respect to Allegation 1, the Complainant alleged that beginning with the spring 2018 baseball season, the University failed to provide accessible parking for patrons with disabilities attending games at the Stadium.

The Complainant was especially concerned about the availability of accessible parking for patrons attending baseball games due to the fact that, as noted above, passenger drop off access adjacent to the Stadium elevators was prohibited during the spring 2018 baseball season.

The University acknowledged that there were some challenges in providing accessible parking during the 2018 season due to factors including construction. However, the University asserted that it has taken steps to address those challenges so that they do not recur during the 2019 season or any subsequent baseball season. OCR visited the University on March 5, 2019 to review the current facilities and the parking available to baseball patrons on game days. OCR assessed the University's compliance in providing accessible parking according to the 2010 Standards.

The University asserts, and OCR's visit confirmed, that the two lots closest to the Stadium (upper and lower lots) have 54 and 75 spaces respectively, and that the upper lot has six designated van accessible parking spaces that are available on a first come first serve basis to any patron with a disability who has a state-issued Department of Motor Vehicles (DMV) permit, plate, or placard. The remaining spaces in those lots are available either to donors who have been issued parking permits, or to individuals who are involved in game day operations including umpires and baseball program staff.

OCR also confirmed that consistent with Section 208.2 of the 2010 Standards, the University provides an adequate number of accessible parking spaces at the University Hall (U-Hall) parking lot, John Paul Jones (JPJ) arena, and McCue Center lot, which the University identified as parking lots where patrons attending baseball games may park. Although those lots are generally restricted on weekdays from 7:30 am – 5:00 pm to those who have University-issued permits, the designated accessible parking spaces in each of those lots nevertheless are available to individuals who have a state-issued DMV permit, plate, or placard. The University also identified the Emmet-Ivy Garage as a parking facility where patrons attending baseball games may park. The University asserted that the Emmet-Ivy Garage has approximately 1250 parking spaces of which 23 are accessible. During the on-site visit, OCR identified only six designated accessible parking spaces at the Emmet-Ivy Garage. From OCR's review of the ground surface on Level 1 of the Emmet-Ivy Garage, it appears that an additional 17 spaces previously had been designated accessible but as of the site visit no longer bore that designation. It was not clear whether those 17 accessible spaces had been eliminated or re-located to another parking facility.

In addition, although the University provides the minimum number of accessible parking spaces at the McCue Center lot, OCR was concerned that that one space is not adjacent to an access aisle as required by Section 502.2 of the 2010 Standards.

Upon notice of OCR's concerns regarding whether there was a sufficient number of accessible spaces at the Emmet-Ivy Garage and that one designated accessible space at the McCue Center lot did not have the requisite access aisle, the University immediately took steps to review both facilities and promptly undertake modifications to ensure that the facilities comply with the 2010 Standards. Through the enclosed voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University has agreed to provide notice that all modifications have been completed, and OCR will confirm that the modifications were completed consistent with the 2010 Standards.

Further, during OCR's site visit to the University on March 5, 2019, OCR identified a surface area bounded by a right side handrail outside the gated entrance to the elevator side of the Stadium, which appears to be a ramp as defined by Section 106.5 of the 2010 Standards. The University subsequently conducted its own assessment of the area in question and reached a different

conclusion. Specifically, the University maintains that the area in question is a walkway, not a ramp, and as such, it satisfies the requirements of the 2010 Standards without the need for further alteration. Through the voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University has agreed to allow OCR to reconcile the different conclusions to ensure that the area in question satisfies the requirements of the 2010 Standards.

### **Allegation 2**

Regarding Allegation 2, the Complainant alleged that beginning with the spring 2018 baseball season, the University no longer allowed patrons with disabilities to be dropped off in the parking lot with the closest proximity to the Stadium's elevators.

Section 108(j) of OCR's *Case Processing Manual* provides that OCR will dismiss an allegation when OCR obtains credible information indicating that the allegation is currently resolved and is therefore no longer appropriate for investigation.

As noted above, during summer 2017, the University began a right field Stadium expansion project and alterations to the parking lots in closest proximity to the Stadium (i.e., the upper lot and the lower lot). For safety concerns and due to ongoing construction, the University did not allow drop-offs of passengers, including patrons with disabilities, at the upper lot in closest proximity to the Stadium's elevators during the spring 2018 baseball season, even though the University had permitted the practice in previous seasons. As of the outset of the spring 2019 baseball season, patrons with disabilities can once again be dropped off in the upper lot in close proximity to the Stadium's elevators. Consequently, OCR finds that Allegation 2 has been resolved during the course of OCR's investigation, and, therefore, is no longer appropriate for investigation. Accordingly, OCR is closing Allegation 2 under Section 108(j) of OCR's *Case Processing Manual*.

### **Allegation 3**

With respect to Allegation 3, the Complainant alleged that the University's shuttle service from the designated pick up area for transportation of patrons with disabilities to the Stadium on game days is not accessible to patrons with mobility impairments who use wheelchairs.

The Complainant explained that the shuttle system that transports patrons between the lower lot and the Stadium is not accessible because the golf carts that are used are not wheelchair accessible. The University maintains that it does not offer a shuttle service for patrons with disabilities to the Stadium. Rather the University asserts that two golf carts are "courtesy carts" to service both entries to the Stadium. Such courtesy carts operate from the lower lot to the two Stadium entrances when the gates to the Stadium open, and the carts remain available to transport patrons until the end of the game. University staff confirmed that there are three designated drop off/pick up spots on the elevator side of the Stadium and one designated drop off/pick up spot on the other side of the Stadium. According to the University, pursuant to state law, the golf carts are not permitted to cross any public roads. The University acknowledges that neither of the two golf carts is "ADA compliant".

OCR is concerned that patrons with mobility impairments who use a wheelchair are denied access to the "courtesy cart" service provided by the University.

Through a voluntary resolution agreement obtained pursuant to Section 302 of OCR's *Case Processing Manual*, the University has agreed to ensure that to the extent that it continues to offer a courtesy cart service to patrons attending baseball games, it will ensure that the service is accessible to individuals with disabilities who utilize wheelchairs, or that it will provide an equally effective alternative means of access, in compliance with Section 504 and Title II.

### **Conclusion**

On April 12, 2019, the University signed the enclosed Resolution Agreement (the Agreement) which, when fully implemented, will address Allegations 1 and 3. 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 University to provide OCR with evidence that all modifications to the McCue Center parking lot, as well as the Emmet-Ivy Garage, have been completed consistent with the 2010 Standards. In addition, the Agreement requires the University to provide sufficient verification to support its determination that the surface bounded by a right side handrail outside the gated entrance to the elevator side of the Stadium (the area in question) is a walkway, not a ramp, and as such satisfies the requirements of the 2010 Standards without the need for further alteration.<sup>1</sup> Finally, to the extent that the University continues to offer a courtesy cart service to patrons attending baseball games at the Stadium, the Agreement requires that the University ensure that the service is accessible to individuals with disabilities who utilize wheelchairs, or that it will provide an equally effective alternative means of access, in compliance with Section 504 and Title II. Please review the enclosed Agreement for further details. OCR will monitor the University's implementation of the Agreement until the University has fulfilled the terms of the Agreement.

This concludes OCR's investigation of the complaint. This letter should not be interpreted to address the University'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 University 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.

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<sup>1</sup> To the extent that the area in question is subsequently determined to be a ramp, not a walkway, the University will take actions needed to ensure that it satisfies the requirements of the 2010 Standards, including if necessary installation of a left side handrail.

We appreciate the cooperation of University personnel, most notably Catherine Spear, Associate Vice President, Office for Equal Opportunity and Civil Rights, in the resolution of this complaint. If you have any questions regarding this letter, please contact Betsy Trice, the OCR attorney assigned to this complaint, at 202-453-5931 or [betsy.trice@ed.gov](mailto:betsy.trice@ed.gov).

Sincerely,

Letisha Morgan-Cosic  
Team Leader, Team II  
Office for Civil Rights  
District of Columbia Office

Enclosure

cc: Catherine Spear, Associate Vice President (*via email*)