



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
VIRGINIA
WASHINGTON, D.C.

April 20, 2015

Dr. Marc Sosne
Superintendent
Clover School District
604 Bethel Street
Clover, South Carolina 29710

RE: OCR Complaint #11-14-1268
Letter of Finding

Dear Dr. Sosne:

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 June 17, 2014, against Clover County Schools (the District). The complaint alleged that the District discriminates against students with disabilities because specific facilities at the District Resource Center building (Resource Center), Griggs Road Elementary School (Griggs), and Larne Elementary School (Larne) are not accessible to students with mobility impairments. Specifically, the complaint alleged the following:

1. At the Resource Center, Griggs and Larne:
 - a. The playgrounds do not have accessible paths of travel, equipment and ground surface materials;
 - b. The internal and external doors are too heavy; and
 - c. The cafeteria checkout lines are inaccessible.
2. At the Resource Center:
 - a. The curb cut at the side of the cafeteria door does not allow appropriate access;
 - b. There is no curb cut near the entrance to "Headstart;"
 - c. The accessible parking spaces are not appropriate (e.g., no access isles).
3. At Larne:
 - a. The curb cut to the access door does not allow appropriate access; and
 - b. There are no grab bars in the student restroom.

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

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

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.

To investigate this complaint, OCR staff inspected the facilities at issue in the complaint. OCR identified compliance concerns with regard to the playgrounds at all three locations (allegation 1.a), and the parking and accessible routes at the Resource Center (allegations 2.a, 2.b, and 2.c). OCR also identified compliance concerns with regard to the accessibility of a field basketball court and four lawn basketball stations at Griggs as well as the grab bars in the adult bathroom in the faculty room at Larne. In addition, prior to the completion of OCR's investigation, the District agreed to resolve allegation 1.b (regarding the force required to open internal and external doors at the three locations). OCR found that the cafeteria checkout lines at all three locations are compliant with the applicable requirements (allegation 1.c), as are the curb cut to the access door at Larne (allegation 3.a) and the grab bars in the student restroom at Larne (allegation 3.b).

General Legal Standards:

The accessibility requirements of the Section 504 implementing regulations are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II implementing regulations are found at 28 C.F.R. §§ 35.149-35.151. Both 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149 provide generally that no qualified individual with a disability shall, because a recipient's facilities are inaccessible to or unusable by disabled individuals, be excluded from participation in, or denied the benefits of services, programs or activities; or otherwise be subject to discrimination by the recipient. The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's/public entity's facilities are accessible to or usable by persons 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.

For purposes of determining accessibility, a "facility" is defined at 34 C.F.R. § 104.3(i) to include "all or any portion of buildings, structures, equipment, roads, walks, parking lots or other real or personal property or interest in such property." Under 28 C.F.R. § 35.104, a "facility" means "all or any portion of buildings, structures, sites, complexes, equipment, ... walks, ...or other real or personal property, including the site where the building, property, structure or equipment is located." Interpretive guidance to the Title II regulation issued by the U.S. Department of Justice states that the term "facility" includes both indoor and outdoor areas where human-constructed improvements, structures, equipment or property have been added to the natural environment.

The Section 504 regulations define an existing facility as any facility that was already constructed, or for which groundbreaking had begun, prior to June 3, 1977 (the effective date of the Section 504 regulation). Recipients of Federal financial assistance must operate each

program or activity of an existing facility so that the program or activity, when viewed in its entirety, is readily accessible to and usable by persons with disabilities. This standard does not require a recipient/public entity to make each existing facility, or every part of an existing facility, physically accessible if alternative methods (*e.g.*, relocating activities or using alternative sites) are effective in providing access to the service, program, or activity in question. In choosing among methods for meeting program accessibility requirements, a recipient is to give priority to those methods that serve persons with disabilities in the most “integrated setting appropriate.” 34 C.F.R. § 104.22 (a)(b). The Section 504 standard is typically referred to as “program access.” Title II has similar requirements as Section 504 with regard to existing facilities constructed before January 26, 1992.

The new construction provisions of the Section 504 and Title II regulations 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, districts 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 one of the following: UFAS, ADAAG, or the 2010 ADA Standards for Accessible Design (2010 Standards).¹ The Title II regulation provides that districts are required to comply with the 2010 ADA Standards for Accessible Design for construction or alterations commencing on or after March 15, 2012.² If an element does not meet the requirements of the applicable standard at the time of construction the standard applied to fix the problem is the current standard, in this case the 2010 Standards. Additionally, if the facility meets the 2010 Standards there is no further determination required as to whether it met the standard at the time of construction. Unless noted otherwise, OCR will consider if each facility meets the 2010 Standards; if it does not OCR will look to the applicable standard or program access.

A playground meets the definition of a “facility” under the Section 504 and Title II regulations. A playground facility is comprised of the structure or equipment installed to provide play activities, the route into and around the playground area, as well as the surface surrounding the structure or equipment. Until recently, there were no Federally-adopted accessibility design standards that carried the authority of a regulation and specified their application to the unique features of play areas. The 2010 Standards include (at sections 240 and 1008) scoping and technical requirements for play areas.

¹ The 2010 ADA Standards for Accessible Design consist of 28 C.F.R. § 35.151 and the 2004 ADAAG at 36 C.F.R. Part 1191, appendices B and D.

² The U.S. Department of Education revised its Section 504 regulations to formally adopt the 2010 Standards in lieu of UFAS. The Section 504 regulations now require the use of the 2010 Standards in new construction and renovations.

According to the Title II regulations (28 C.F.R. § 35.150(b)(2)(i)), elements that have not been altered in existing facilities on or after March 15, 2012, and that comply with the corresponding technical and scoping specifications for those elements in either the ADAAG or UFAS, are not required to be modified in order to comply with the requirements set forth in the 2010 Standards; this is called a safe harbor. However, 28 C.F.R. §35.150(b)(2)(ii) provides the safe harbor provision does not apply to those elements in existing facilities that were not subject to supplemental requirements, which includes play areas or play grounds. Thus, play areas built before March 15, 2012, must comply with the 2010 Standards. However, although preferable for an entity to meet the 2010 Standards, if it is not possible to achieve compliance with the 2010 Standards in an existing setting, the requirements for program accessibility provide enough flexibility to permit the covered entity to pursue alternative approaches to provide accessibility.

Background

The Complainant raised concerns about three different schools within the District that each had multiple playgrounds. The Resource Center was built in the 1950s and had significant renovations in 1980 and 1996. There are two playgrounds at the Resource Center. The first was built in 2006 (Resource 1) to serve upper elementary school students, who were at a school that was operating there at the time. Additionally, there is a small playground that was installed by the private Head Start program that the District provides the space to (Resource 2). The District has told OCR it does not own the playground but did not provide OCR any documentation that it does not own or operate this program, despite multiple requests.

Larne was constructed in 2009 with three playgrounds. One playground at Larne serves most of the students and is open to the public after school hours (Larne Main). Additionally, there are two playgrounds (Larne A and Larne B) that are each attached to two classrooms which serve preschool and kindergarten students. These playgrounds are completely fenced in, and not open to the public after school hours.

Similar to Larne, Griggs has one main playground (Griggs Main) and four smaller playgrounds (Griggs A through Griggs D) that are attached to two prekindergarten and the kindergarten classrooms. Griggs' playgrounds were added in 2006 when the building was renovated.

Discussion

Playgrounds

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.

Griggs and Larne Play Areas

The playgrounds at Larne and Griggs serve similar populations and have similar configurations. There are accessible paths of travel to and around all the playgrounds at these schools.

As explained above, the 2010 Standards have specific requirements about the amount of equipment provided. Each playground is required to have a specified number of ground level play components and different types of ground level play components based on the number of elevated components. For example at Larne A there are six elevated components (double slide, observation bubble, peddle climber, wavy slide, an elevated steering wheel, and a rock wall). The 2010 Standards require at least two ground level play components on an accessible route and at least two play types. A ground level play component is approached and exited at the ground. There are four different types of ground level components at Larne A (swings, sandbox, spinning stools, and drums³). Larne A is in compliance with the requirements of the 2010 Standards

³ OCR acknowledges that the spinning stools are 30 inches above the ground and the drums are located at 44 inches above the ground. These are at heights that are not accessible to any child ages two to five which Larne A was designed for. The 2010 Standards do not have a required reach range, and thus OCR cannot require any particular

regarding elements. Larne B has a similar configuration to Larne A, and meets the element requirements of the 2010 Standards. Additionally Larne Main meets the 2010 Standards; it should be noted, there are almost as many ground level play components as elevated play components there. Griggs playgrounds also meet the 2010 Standards regarding numbers of ground level play components.

Larne Main has a smooth surface that was installed during 2014, prior to OCR visiting in August. This surface appears to meet the 2010 Standards requirements of the 2010 Standards § 1008.2.6, which requires surfaces to meet the ASTM F 1951 and 1292 with regard to ground surfaces and use zones respectively. The District told OCR the surface meets the ASTM standard, and this assertion appears correct.

OCR notes there is a ramp to enter the elevated area of Larne Main. There is a concrete ramp poured just prior to OCR visiting Larne; because it is new construction it must meet the 2010 Standards. This ramp is 92 inches long with running slopes ranging from four to nine percent. The 2010 Standards require a running slope no greater than 8.33%. Therefore this ramp does not meet the 2010 Standards. Additionally, OCR notes there are no handrails, and the 2010 Standards require handrails for ramps with a rise greater than six inches (2010 Standards § 405.8); this ramp has a raise of nine inches.

The remaining playgrounds and Larne and Griggs have Engineered Wood Fiber surfaces, which if properly installed and maintained correctly meet the requirements of the 2010 Standards § 1008.2.6. The District did not provide OCR any evidence that the ground surface was installed properly using a multistep approach.⁴ Additionally, OCR observed spots where there was poor surface material in certain areas of the ground including not enough depth of coverage. This is evidence the ground surface is not maintained correctly. OCR concluded that the surfaces are not maintained adequately, and do not meet the 2010 Standards.⁵

OCR next considered whether the play areas achieve program accessibility, despite a specific play areas the failure to conform to the 2010 Standards. Under that standard, there is a preference for all play areas to conform with the 2010 Standards, however, not all playgrounds must meet the 2010 Standards to enable all programs operated at each school to be accessible. The District must determine which play areas must be accessible meet the 2010 Standards to the extent necessary in order for a program to be accessible. Therefore, the District must determine which playground is required to have a surface compliant with 2010 Standards §1008.2.6. Based on the current use of the playgrounds, OCR determined that at minimum each of the large playgrounds Larne and Griggs Main, and at least one smaller playground at Larne and Griggs,

height for these elements. And, in any event, Larne A has a sufficient number of ground level play components even if the spinning stools and drums were not counted. Nonetheless, OCR encourages the District to lower all ground elements.

⁴ The Access Board describes a multilayer approach whereby the loose material is installed in layers, watered and compacted in order to achieve an accessible route and level clear ground space at equipment. <http://www.access-board.gov/guidelines-and-standards/recreation-facilities/guides/surfacing-the-accessible-playground/6-recognize-that-proper-installation-is-key> (Retrieved April 6, 2015)

⁵ OCR does have a concern about the impact attenuation standards not being met which would endanger all students if they fell off the equipment which is required by ASTM F1292.

must meet the 2010 Standards to achieve overall program access. Going forward, the District must conduct an annual review of the use of each playground (including who has access to each of the smaller playgrounds and the number of students at each school who require an accessible facility) to determine whether additional changes are necessary meet the 2010 Standards and thus maintain overall program access.

Additionally, at Griggs there is a basketball court located in a grass field near Griggs Main and there is no path of travel to the court. The District could not provide OCR the date of construction; however it said the court was built in the last few years and it appeared to be under ten years old. The 2010 Standards require at least one accessible route to connect accessible buildings, accessible facilities, accessible elements, and accessible spaces that are on the same site (§206.2.2) which meets the requirements of Chapter 4 of the 2010 Standards. Additionally, the ADAAG, the applicable standard at the time of constructions, § 4.1.2(2)(b) requires that there be an accessible route (complying with the specifications set forth in ADAAG 4.3 regarding among other things width, surface, and slope) directly connecting both sides of the court in court sports. Therefore, under either standard (ADAAG or the 2010 Standards), the lack of an accessible path of travel to and around the court is a compliance concern.

Additionally, at Griggs there are four lawn basketball hoops in the middle of the grass. There is no accessible route to the lawn basketball hoops as required by either the 2010 Standards or ADAAG. Also, located in the same area are multiple Four Square Courts adjacent to Griggs Main. The route to these courts is generally accessible, with the exception of the ramp on the route. The ramp has a rise of nine inches but lacks railings. This is not compliant with the 2010 Standards § 405.8 or ADAAG § 4.8, which both require a ramp with a rise greater than six inches to have handrails.

Resource Center

Resource Center 1 has multiple structures in the play area and meets the specifications regarding the number of required ground level play components in the 2010 Standards. Resource Center 1 has the same Engineered Wood Fiber surface material as that of Griggs and Larne so OCR has the same concerns regarding this surface as were raised earlier. Again, OCR considered whether Resource 1 must be accessible in order to achieve program access. Although there is no formal program or activity operated by the District that uses Resource 1, this play area is open to the public. Thus, OCR concluded that the District could achieve program access by either providing notice of another equivalent accessible option in close proximity to Resource 1 or by modifying Resource 1 to comply with the 2010 Standards, including ensuring there is an accessible route including accessible ramps to the area.⁶

The District has stated that Resource 2 was not constructed by the District, but rather a Head Start Program the District gives space to, to operate its program. The District has not provided OCR any information to support this assertion. Nonetheless, this play area does not meet the requirements of the 2010 Standards. The transfer access, which is required to connect elevated

⁶ OCR always encourages access and expansion of programs; however we acknowledge that to achieve legal compliance the District may elect to eliminate one or both of the play areas at the Resource Center.

play components, does not meet the 2010 Standards § 1008.3 standard. The 2010 Standards §1008.3.1.1 requires each transfer step to be at least 14 inches deep; the transfer step at Resource 2 is 12 inches deep. Additionally, the transfer platform is 24 inches off the ground, whereas 2010 Standards §1008.3.1.1 requires the transform platform to be between 11 and 18 inches off the ground.⁷

The District did not provide OCR any information about the ground surface at Resource 2, which OCR staff observed to be woodchips in an elevated bed. The elevated bed has no accessible means to access it; there is a large step required for entry without an accessible route to it. Additionally, the woodchips are very sparse and there were instances when the dirt could be seen. This ground cover does not meet the ASTM F 1292-99 and ASTM F 1292-04, and thus the 2010 Standards. This is the only playground for the Head Start program; to enable this program to be fully accessible, the play area would need to meet the 2010 Standards.

Door pressure

The 2010 Standards require the maximum force for pushing or pulling open an interior door to be five pounds of force. (§404.2.9). ADAAG has the same requirement at § 4.13.11(2)(b). The 2010 Standards and ADAAG do not specify a weight for exterior hinged doors. Prior to OCR collecting information regarding this issue the District committed to develop a systemic monitoring process for internal doors through a monthly check list. OCR will monitor the implementation of these changes.

Cafeteria checkout lines

The Complainant told OCR the cafeteria checkout lines were too high and thus inaccessible. As an initial matter it is unclear if the cafeteria lines are required to meet the ADAAG or the 2010 Standards because they are not fixed; they are on wheels. The 2010 Standards have a non-binding advisory regarding children's forward reach range for children age five to eight of between 18 to 40 inches (Advisory 308.1). At Larne there are two lines for the older students; one line is located between 30 and 31.5 inches high and the other is located between 26 and 27 inches. At Griggs the lines are located at 26.5 inches and at the Resource Center they located at 36 inches. Based on this information, OCR concluded that the cafeteria lines are accessible.

Concerns about Resource Center

The Complainant raised multiple issues about the Resource Center regarding parking and accessible routes to and from. Since the last major renovation was 1996, the parking and accessible routes need to meet the standards of ADAAG, and the analysis will be under ADAAG.

The Complainant's first concern is that the side cafeteria door does not allow appropriate access to the cafeteria. OCR confirmed that this area is configured in such a way that causes multiple

⁷ OCR acknowledges that the inadequate ground surface (discussed further below) affects the height of the transfer platform.

accessibility concerns. For example: there is no curb cut at the curb on the accessible route. ADAAG definitions § 3.5 defines an accessible route as a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Exterior accessible routes include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts. The current configuration requires someone to walk in the vehicular way where there is no designated crosswalk. Additionally, the designated parking lacks adequate access aisles consistent with ADAAG 4.1.2 (5); because the area inside of the lines on either side of the access aisle have not been painted recently, the access aisle looks like a parking space. Also, the current location of accessible parking is not on an accessible route; rather it cuts through the parking lot including vehicular ways. In addition, the number of accessible spaces is inadequate for the size of the lot. While the Complainant's is correct that the landing door does not allow access to the cafeteria, that door is not on an accessible route to the building. To resolve any problems, the District will need to install of a "Do Not Enter" sign.

The Complainant also raised concerns about the lack of a curb cut near the entrance to "Headstart." There is a curb cut but it requires someone to go through the vehicular way to get to the ramp from accessible parking which is located across the lot. Additionally, the slopes of this curb cut range from 10.7% to 16%. ADAAG (at §§ 4.7.2 and 4.8.2) requires slopes to not be greater than 8.33%. OCR suggests moving the curb ramp to a new location of the accessible parking to enable resolution of the accessibility concerns.

The Complainant raised concerns about the main parking lot at the Resource Center. There are four spaces designated accessible but two do not have an access aisle as required by ADAAG § 4.1.2(5)(a). Two additional spaces share an access aisle which appeared to be van accessible aisle but the aisle is 41 inches wide and should be 96 inches wide under ADAAG. Additionally, the curb cut is 35 inches wide and protrudes into the parking space; this is contrary to ADAAG § 4.3.3, which states that all accessible routes shall be at minimum 36 inches wide. The curb cut is part of the accessible route and thus must be 36 inches wide.

Concerns about Larne

Larne was constructed in 2009. Aside from play areas, discussed above, it would need to meet the ADAAG standards. Therefore the analysis will be under ADAAG. The Complainant told OCR the curb cut to the access door does not allow for appropriate access. OCR found two curb cuts, one serving the door near the cafeteria to the parking lot and one connecting the parking to the main entrance. Both of these curb cuts' slopes ranged from 1.2 to 4.3%. As discussed above, ADAAG (at § 4.7.2 and 4.8.2) requires that slopes should not be greater than 8.33%. Therefore these two curb cuts are compliant with ADAAG. Additionally, these curb cuts were of appropriate width and had sufficient landings connected.

The Complainant told OCR there are no grab bars in the student restroom. This is incorrect. There is an accessible stall that has grab bars installed at 26.5 inches. ADAAG § 4.16.7(3) requires grab bars for children to be installed between 18 inches and 27 inches above the finish floor. Therefore the grab bars are installed correctly. However, OCR identified a concern regarding the adult bathroom in the faculty room. To accommodate the Complainant's request

for the Student the District lowered the grab bars in that bathroom to 21.5 inches. As a result, that bathroom does not comply with ADAAG § 4.17.6, which requires grab bars to be between 33 and 36 inches high. ADAAG requires that each public or common use toilet facility satisfy certain accessibility standards, including the requirement regarding grab bar height. Therefore, the adult bathroom in the faculty room does not meet the ADAAG requirements.

On April 17, 2015, the District entered into the attached Resolution Agreement, which, when fully implemented, will resolve the compliance concerns identified above. OCR will monitor the District's compliance with the Agreement.

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 may not retaliate against an individual who asserts a right or privilege under a law enforced by OCR or who 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 during the resolution of this complaint. If you have any questions, please contact Ms. Kelly, the OCR investigator assigned to this complaint, at (202) 453-5919 or Deborah.kelly@ed.gov.

Sincerely,

/S/
Kristi R. Harris
Team Leader
District of Columbia Office
Office for Civil Rights

Attachment

cc: XXXX