



**U.S. Department of Justice**

Office of Justice Programs

*Office for Civil Rights*

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Washington, D.C. 20531

February 18, 2020

Todd Ishee  
Commissioner of Prisons  
North Carolina Department of Public Safety  
4201 Mail Service Center  
Raleigh, NC 27699-4201

Re: Notice of Voluntary Agreement  
[REDACTED] v. *North Carolina Department of Public Safety* (17-OCR-0205)

Dear Commissioner Ishee:

This letter documents our work with the North Carolina Department of Public Safety (NCDPS) regarding Complaint No. 17-OCR-0205 and sets forth a voluntary agreement to ameliorate non-compliance with the Americans with Disabilities Act (ADA) Standards for Accessible Design at the Albemarle Correctional Institution. We greatly appreciate your cooperation in working to resolve this Complaint and remediate the deficiencies that we verified during our September 11, 2018 visit. The agreement below will achieve our common goal of ensuring that the Albemarle Correctional Institution is accessible to individuals with disabilities under NCDPS custody.

Please review this letter and, if you agree with the terms of the agreement, sign and return it to our office. The U.S. Department of Justice (DOJ) through the Office of Justice Programs (OJP), may publish the signed letter on its Office for Civil Rights (OCR) webpage. The DOJ will also consider this Complaint resolved upon receipt of your signed letter. The matter will remain open only for the purposes of ensuring compliance with the terms set forth below.

**Background**

The OCR initiated its investigation after receiving a Complaint from an individual who had been incarcerated at the Albemarle Correctional Institution since early 2016. Complainant, who requires a wheelchair, had been assigned to the Falls Dorm and the Administrative Segregation Unit during his period of correctional confinement. Complainant alleged that he requested access to ADA accessible facilities, including toileting and showering facilities, and that the NCDPS denied his requests. After obtaining additional information from Complainant, the OCR

initiated an investigation by issuing a series of Data Requests to the NCDPS, which is subject to the OCR's enforcement authority because it receives federal financial assistance from the DOJ.<sup>1</sup>

The NCDPS was fully cooperative and responsive to the OCR's requests, but was unable to substantiate that the Falls Dorm and Administrative Segregation Unit are in compliance with the ADA Standards for Accessible Design. As a result, with the assistance of an architectural consultant, the OCR conducted an onsite examination of the Falls Dorm and the Administrative Segregation Unit at the Albemarle Correctional Institution on September 11, 2018, to evaluate the layout of each.

On February 4, 2019, the OCR informed the NCDPS that the following items were not in compliance with the ADA Standards for Accessible Design:

Falls Dorm:

- F1. Drinking Fountain Spout Height (Height exceeded, Section 602.4)
- F2. Drinking Fountain Spout Location (Spout location dimension not met, Section 602.5)
- F3. Lavatory Height (Height exceeded, Section 606.3)
- F4. Grab Bar for Roll-In Shower (Horizontal grab bar missing, Section 608.3.2)
- F5. Shower Control Mounting Height (Exceeds height limitations, Section 608.5.1)
- F6. Position of Shower Grab Bar (Grab bar height exceeded, Section 609.4)
- F7. Shower Compartment Seat (Seat mounted too low, Section 610.3)
- F8. Telephone Push Button Controls Height (Height exceeded, Section 704.2.2)

Administrative Segregation Unit:

- A1. Mirror Height (Height exceeded, Section 603.3)
- A2. Water Closet Location (Exceeds allowable dimension from centerline, Section 604.2)
- A3. Lavatory Height (Height exceeded, Section 606.3)

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<sup>1</sup> Several DOJ components currently provide grant funding to the NCDPS, including the Bureau of Justice Assistance (BJA), Office for Victims of Crime (OVC), Office on Violence Against Women (OVW), and Office of Juvenile Justice and Delinquency Prevention (OJJDP). *E.g.*, BJA Justice Assistance Grant No. 2016-DJ-BX-1052, BJA Justice Assistance Grant No. 2017-DJ-BX-0129, OVC Victims of Crime Act Assistance Formula Grant No. 2017-VA-GX-0050, OJJDP Title II Formula Grant No. 2017-JF-FX-0058, OVW Services\* Training\* Officers\* Prosecutors (STOP) Violence Against Women Formula Grant No. 2017-WF-AX-0040, OVW Sexual Assault Services Formula Grant No. 2018-KF-AX-0027, BJA Justice Assistance Grant No. 2018-DJ-BX-0041, OVC Victims of Crime Act Assistance Formula Grant No. 2018-V2-GX-0061, OJJDP Title II Formula Grant No. 2018-JX-FX-0043, OVW STOP Violence Against Women Formula Grant No. 2019-WF-AX-0021, OVC Victims of Crime Act Assistance Formula Grant No. 2019-V2-GX-0067, BJA Justice Assistance Grant No. 2019-DJ-BX-0067, and OJJDP Title II Formula Grant No. 2019-JX-FX-0009.

- A4. Transfer Shower Compartment Width (Inadequate width, Section 608.2.1)
- A5. Transfer Shower Seat Clearance (Inadequate seat transfer clearance, Section 608.2.1)
- A6. Shower Control Mounting Height (Exceeds height limitations, Section 608.5.1)
- A7. Shower Compartment Seat Height (Seat mounted too low, Section 610.3)<sup>2</sup>

The OCR affirmed its understanding that some of the deficiencies could be remedied quickly, while others may require additional time. The OCR expressed its amenability to working with the NCDPS to come into compliance.

Following a series of discussions, on February 22, 2019, the NCDPS identified the deficiencies that it would remediate within ninety (90) days and proposed that it would complete an engineering assessment regarding the remaining deficiencies at that same time. The parties remained in frequent contact and the NCDPS provided its update on June 7, 2019.

According to this update, the following deficiencies were corrected as of April 4, 2019: F4, F6, and A1. Additionally, regarding F5 and A6, the NCDPS noted that these showers have dual controls and the OCR’s architectural consultant failed to memorialize the second controls on each, which comply with ADA Standard 608.5.1.

The parties again remained in frequent communication and on October 25, 2019, the NCDPS confirmed the additional correction of the following deficiencies: F7, F8, A2, and A3.

The NCDPS subsequently provided the following schedule to address the remaining six (6) identified deficiencies:

Deficiency Nos.	NCDPS Central Engineering Recommended Action
F1 & F2	Replace with ADA compliant drinking fountain mounted to comply with ADA Standard 602.4. NCDPS Facilities Maintenance projects completion by July 1, 2020.
F3	Lower the lavatory to comply with ADA Standard 606.3. NCDPS Facilities Maintenance projects completion by July 1, 2020.

[Chart continued on next page.]

<sup>2</sup> The attached chart provides additional information.

[Chart continued from prior page.]

Deficiency Nos.	NCDPS Central Engineering Recommended Action
A4 & A5	The shower compartment should be reconfigured as indicated in the report. NCDPS Facilities Maintenance projects completion by May 1, 2020.
A7	Re-install the shower seat at the appropriate height per ADA Standard 610.3 after the space is reconfigured. NCDPS Facilities Maintenance projects completion by May 1, 2020.

Respondent has also reported its plans to expand the number of wheelchair-accessible cells in Ablemarle's Administrative Segregation Unit from two (2) cells (presently) to four (4) cells.

### Agreement

To ensure compliance with Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12132, the North Carolina Department of Public Safety (NCDPS) agrees to the following **terms**:

#### 1. Modifications to the Falls Dorm and Administrative Segregation Unit:

- a. The NCDPS affirms that, as of the date of this agreement, it has made modifications to the following items to comply with the ADA Standards for Accessible Design:

#### Falls Dorm:

- F4. Grab Bar for Roll-In Shower (Horizontal grab bar missing, Section 608.3.2)
- F6. Position of Shower Grab Bar (Grab bar height exceeded, Section 609.4)
- F7. Shower Compartment Seat (Seat mounted too low, Section 610.3)
- F8. Telephone Push Button Controls Height (Height exceeded, Section 704.2.2)

#### Administrative Segregation Unit:

- A1. Mirror Height (Height exceeded, Section 603.3)
- A2. Water Closet Location (Exceeds allowable dimension from centerline, Section 604.2)
- A3. Lavatory Height (Height exceeded, Section 606.3)

- b. The NCDPS affirms that, as soon as practicable, but no later than July 1, 2020, it will make modifications to the following items to comply with the ADA Standards noted therein:

Falls Dorm:

- F1. Drinking Fountain Spout Height (Height exceeded, Section 602.4)
- F2. Drinking Fountain Spout Location (Spout location dimension not met, Section 602.5)
- F3. Lavatory Height (Height exceeded, Section 606.3)

- c. The NCDPS affirms that, no later than May 1, 2020, it will make modifications to the following items to comply with the ADA Standards:

Administrative Segregation Unit:

- A4. Transfer Shower Compartment Width (Inadequate width, Section 608.2.1)
- A5. Transfer Shower Seat Clearance (Inadequate seat transfer clearance, Section 608.2.1)
- A7. Shower Compartment Seat Height (Seat mounted too low, Section 610.3)

The U.S. Department of Justice (DOJ) appreciates the effort of the NCDPS to comply with Section 504 and the ADA regarding accessibility for individuals with disabilities confined at the Albermarle Correctional Institution.

In addition, to ensure that the NCDPS has completed and/or will complete item 1 of this agreement, the NCDPS and the Office for Civil Rights (OCR) agree to the following:

2. The NCDPS will communicate periodically to ensure that remediation expectations, including scope and timeliness, are clear. The NCDPS and the OCR commit to:
  - a. Hold a joint conference call every three (3) months from the date of this signed agreement until the completion of the specified modifications.
  - b. During the call, the NCDPS will update the OCR on its status implementing this agreement and any obstacles or concerns that have arisen since the last call. The OCR encourages the NCDPS to contact the OCR with any questions or for technical assistance requests regarding this agreement. The OCR remains available to provide such technical assistance. Provided that no additional compliance issues arise prior to the final update, the OCR will close this review within sixty (60) days of our final scheduled call.
3. Prior to the initial joint conference call three (3) months from the date of this signed agreement, the NCDPS will provide photographs and measurements to verify that it has completed the modifications specified in item 1, parts a and c.

4. Within thirty (30) days of completion, the NCDPS will provide photographs and measurements to verify that it has completed the modifications specified in item 1, part b.

5. If, after reviewing the materials provided by the NCDPS in items 3 and 4, the OCR requests an onsite visit to confirm that the NCDPS has completed the item 1 modifications in accordance with the ADA Standards, the NCDPS and the OCR will schedule a visit at a mutually agreeable date and time.

### **Additional Information**

Please sign the last page below and return this document to the OCR if the NCDPS agrees to these terms. Once received, the OCR will keep the file open only for the purposes of the five (5) items listed above.

Although the DOJ does not expect it, should there be a material breach of any term of the agreement, the DOJ has the discretion to extend the compliance period or reopen this matter and assess the need for additional review and/or a formal investigation.

This letter does not constitute a finding that the NCDPS is or will be in full compliance with the ADA, Section 504, or other federal civil rights laws, nor does it address other potential claims of discrimination on the basis on a protected category that may arise from NCDPS activities.

The purpose of this letter is to memorialize the NCDPS's commitment to ensure that its facilities are accessible to individuals with disabilities under NCDPS correctional custody. The parties agree that the five (5) terms listed above will resolve all compliance concerns arising from Complaint No. 17-OCR-0205.

Please note that this letter does not affect any legal rights that complainants may have to file private lawsuits regarding the concerns raised in complaints to the OCR. We will retain the Complaint for our records and take the information provided into account if we receive similar future complaints against the NCDPS.

We are obligated to inform you that recipients may not intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone who has either taken action or participated in an action to secure rights protected by the civil rights laws that the DOJ enforces. The protection against retaliation extends to recipient employees who provide information or otherwise cooperate with OCR's review. Any individual who alleges such harassment or intimidation may file a Complaint with the OCR. We would investigate such a complaint if the situation warrants.

Under the Freedom of Information Act, it may be necessary to release information and related correspondence and records shared by recipients and complainants upon request. In the event

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that we receive such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

If you have any questions concerning this letter or any of its terms, please contact Heather M. Moss at [REDACTED] or [REDACTED]. Please direct any written correspondence about this matter to the address listed above, referencing OCR Complaint No. 17-OCR-0205.

We appreciate your continued cooperation in this matter and look forward to hearing from you.

Sincerely,

X *Michael L. Alston*

Michael L. Alston  
Director  
Signed by: MICHAEL ALSTON



Todd Ishee  
Commissioner of Prisons, North Carolina Department of Public Safety

Agreed to on this 26<sup>th</sup> day of February 2020.

cc: Erik A. Hooks, Secretary of Public Safety  
Jodi Harrison, Deputy General Counsel (by email to Jodi.Harrison@ncdps.gov)

Albemarle Correctional Institution

<b>Deficiency No.</b>	<b>Deficiency Type</b>	<b>Description</b>	<b>Correction(s)</b>	<b>2010 ADA Standards</b>
F1	Drinking Fountain Spout Height	The drinking fountain spout height of 41 1/4 inches exceeds the allowable height of 36 inches.	Lower the drinking fountain so that the spout outlet height is at 36 inches maximum above the finished floor.	Section 602.4
F2	Drinking Fountain Spout Location	The drinking fountain spout location does not meet the minimum dimension of 15 inches from the vertical support.	The existing drinking fountain should be replaced with an accessible drinking fountain in compliance with the dimensional criteria noted.	Section 602.5
F3	Lavatory Height	The lavatory mounting height of 36 1/2 inches exceeds the allowable 34 inch maximum height to the rim.	Lower the lavatory to meet the 34 inch maximum height to the rim.	Section 606.3
F4	Missing Grab Bar for Roll-In Shower	The roll-in shower compartment is missing the required horizontal grab bar opposite to the seat.	Install a new grab bar below the window mounted 33 inches minimum to 36 inches maximum height above the finished floor to the top of the gripping surface.	Section 608.3.2
F5	Shower Control Mounting Height	The shower control heights mounted at 51 inches exceed the height limitations of 38 inches minimum to 48 inches maximum above the shower floor.	Lower or replace the shower controls to meet the height ranges indicated.	Section 608.5.1



F6	Position of Shower Grab Bar	The 40 inch mounting height of the horizontal grab bar exceeds the allowable 33 inches minimum to 36 inches maximum height above the finished floor to the top of the gripping surface.	Lower the grab bar to meet the allowable mounting height. Coordinate the mounting height with the new grab bar referenced in F4 so that they are mounted at the same height.	Section 609.4
F7	Shower Compartment Seat	The shower seat mounted at 16 inches is below the required height range of 17 inches minimum to 19 inches maximum above the shower floor.	Relocate the shower seat within the compliant height ranges of 17 to 19 inches.	Section 610.3
F8	Telephone Push Button Controls Height	The telephone push button control height of 54 inches exceeds the operable parts allowable heights per Section 309.	Lower the telephone to meet the 48 inch maximum reach range for operable parts.	Section 704.2.2
A1	Mirror Height	The mirror located 55 inches above the lavatory exceeds the allowable height of 40 inches maximum to the bottom edge of the reflecting surface.	Lower the mirror to the maximum allowable height.	Section 603.3
A2	Water Closet Location	The water closet location, currently 19 inches, exceeds the allowable dimensional range of 16 inches minimum to 18 inches maximum from the side wall or partition.	Relocate the water closet to meet the required dimensional criteria from the side wall or partition.	Section 604.2
A3	Lavatory Height	The 36 inch lavatory mounting height exceeds the allowable 34 inch maximum height to the rim.	Lower the lavatory to meet the 34 inch maximum height to the rim.	Section 606.3

A4	Transfer Shower Compartment Width	The transfer shower compartment dimension of 35 inches does not have the required width.	The shower compartment requires renovation and reconfiguration to provide the compliant transfer shower compartment size and clearances.	Section 608.2.1
A5	Transfer Shower Compartment Seat Clearance	The transfer shower compartment does not have the required transfer clearance at the shower seat.	The shower compartment requires renovation and reconfiguration to provide the compliant transfer shower compartment size and clearances.	Section 608.2.1
A6	Shower Control Mounting Height	The shower control heights mounted at 51 inches exceed the height limitations of 38 inches minimum to 48 inches maximum above the shower floor.	Lower or replace the shower controls to meet the height ranges indicated. Coordinate the recommended modification with modifications indicated at A4 and A5.	Section 608.5.1
A7	Shower Compartment Seat Height	The shower seat mounted at 16 inches is below the required height range of 17 inches minimum to 19 inches maximum above the shower floor.	Relocate the shower seat within the compliant height ranges. Coordinate the recommended modification with modifications indicated at A4, A5 and A6.	Section 610.3

Office for Civil Rights, Office of Justice Programs, U.S. Department of Justice Complaint No. 17-OCR-0205 (North Carolina Department of Public Safety)