

ALAN G. HEVESI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 28, 2005

Mr. Adrian Benepe
Commissioner
New York City Department of Parks & Recreation
The Arsenal, Central Park
New York, NY 10021

Re: Compliance with ADA Requirements
Audit Report 2004-N-6

Dear Mr. Benepe:

According to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution and Article III of the General Municipal Law, we audited the actions of the New York City Department of Parks and Recreation (Parks) to provide access to its facilities to persons with disabilities, and determined whether Parks has complied with selected requirements of Section 504 of The Rehabilitation Act of 1973 (Rehabilitation Act) and Title II of the Americans with Disabilities Act of 1990 (ADA), as well as the US Department of Justice Regulation, 28 CFR Part 35 (Regulation). Our audit covered the period of January 1, 2000 through January 19, 2005.

A. Background

The New York City Department of Parks and Recreation, a mayoral agency, operates one of the largest municipal park systems in the country. Its principal mission is to ensure that the parks, beaches, playgrounds, and recreational facilities in New York City (City) are clean, safe, accessible, and attractive for the health and enjoyment of the people; and that they provide a wide variety of recreational opportunities.

Parks maintains about 28,700 acres of parkland, including almost 4,000 facilities that encompass nearly 1,000 playgrounds, 800 athletic fields, 550 tennis courts, 63 swimming pools, 35 recreation centers, and 14 miles of beaches. These facilities are visited by millions of individuals every year. Parks' flagship sites, such as Central Park, Riverside Park, Brooklyn Prospect Park, and the Bronx Zoo, are popular tourist attractions. Parks' capital budget totaled about \$406 million for the 2003 fiscal year and about \$465 million for the 2004 fiscal year.

According to the Rehabilitation Act, no otherwise qualified individual with disabilities should be excluded from participation in a program or activity receiving Federal financial assistance. Since passage of the ADA, the law has extended this prohibition of discrimination to all activities of State and local governments covered by the Rehabilitation Act, even if they do not receive Federal

funds. The law generally requires that new construction or alterations initiated after January 26, 1992, incorporate accessibility standards. It does not, however, require that all facilities be ADA-accessible; similar services may be provided at an accessible location.

Parks is also subject to the *ADA Accessibility Guidelines for Buildings and Facilities* (Guidelines), which were adopted by the Department of Justice and published in the Code of Federal Regulations (28 CFR 36) on July 1, 1994, and became effective on October 3, 2002. According to the Guidelines, all of Parks' newly constructed or recently altered recreational facilities must meet ADA requirements; and all accessible elements and spaces of a building or facility located on the same site must be connected by an accessible route that can be reached by disabled visitors. In addition, every facility Parks equips with a comfort station and/or drinking fountain must provide comparable fixtures that are ADA-accessible.

B. Audit Scope, Objectives and Methodology

The objectives of our performance audit were to assess Parks' efforts to provide access to its facilities for persons with disabilities; and to determine whether Parks has complied with selected requirements of the ADA and the Regulation. Our audit covered the period of January 1, 2000 through January 19, 2005. It focused on whether Parks has complied with requirements for a planned transition to ADA-accessible facilities and services, ensured that ADA accessibility is included in all new construction and major alteration projects, and developed information and signage that enables disabled patrons to locate ADA-accessible facilities and services. To accomplish our objectives, we reviewed applicable laws, regulations, policies, and procedures. We interviewed Parks officials, reviewed Parks records, and visited Parks facilities, including the sites of 50 completed capital projects. This audit did not determine the extent to which individual projects were complying with specific ADA standards.

As is our practice, we notified Parks officials at the outset of the audit that we would request a representation letter in which agency management provides assurances, to the best of its knowledge, that the evidence provided to the auditors during the course of this audit is relevant, accurate, and competent. The representation letter is intended to confirm oral presentations made to the auditors and to reduce the likelihood of misunderstandings. Agency officials normally use the representation letter to assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. They affirm either that the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from Parks officials that all relevant information was provided to us during the audit.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those procedures and operations included within the audit scope. Further, these standards require that we

understand Parks' internal control structure and compliance with those laws, rules, and regulations that are relevant to Parks' procedures and operations that are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions, and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally- and statutorily-mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

C. Results of Audit

We found that many of Parks' facilities have been upgraded to improve accessibility. ADA-accessible swimming pools, recreation centers, and parks are provided throughout the City; and the East 54th Street and Asphalt Green - Murphy Center recreation centers in Manhattan were recently altered and rendered ADA-compliant. As part of an early 1970s initiative to create one playground in each borough for disabled children, Parks opened a *Playground for All Children* in Flushing Meadows Park in the 1970s that was furnished with ADA-accessible play equipment. In addition, Parks operates a year-round, Citywide program known as REACH (Recreation, Education, Athletics, and Creative Arts for the Handicapped) that is specially designed to meet the recreational needs of people with disabilities.

However, Parks' approach to implementation of the Regulation, 28 CFR 35, does not meet its requirements or intent. The Self-Evaluation prepared by Parks in 1985, pursuant to the Rehabilitation Act of 1973, does not satisfy the Regulation because it does not identify the existing barriers; nor does it describe the needed modifications. Parks officials also did not develop a Transitional Plan (Plan) establishing a timetable for providing such accessibility; they told us they did not believe such a plan would be viable, considering the number of facilities and services Parks operates and the restrictions on its capital funding. Parks officials adopted a policy that ADA accessibility requirements would be met only in new construction and major alteration projects, an approach they considered more in line with the nature of their funding. But we found that, as a result of Parks' project-by-project, piecemeal approach, even those new or altered facilities do not always contain accessibility elements, leaving many of them noncompliant.

We also determined that Parks has not appointed an ADA Coordinator to oversee all ADA implementation efforts and resolve ADA-related complaints; nor has it established a grievance

process for such complaints. Parks does not actively publicize its ADA-accessible services, through announcements on its website, the distribution of pamphlets or maps, or the placement of signage at facilities. Where it provides facilities that are accessible, Parks does not always identify them by signage; and when facilities do not meet the ADA Guidelines, it does not post information about how to locate a comparable, ADA-accessible alternative.

1. Transitional Plan for Making Facilities and Services ADA-Accessible

The Regulation required public entities to prepare a Self-Evaluation, within one year of the effective date (January 26, 1992) and a Transition Plan within six months from the same date, if they had not done so earlier under the Rehabilitation Act. These documents were to evaluate any of the entities' facilities and services that did not meet Federal ADA standards, identify existing barriers, and describe modifications that needed to be made. The Self-Evaluation that Parks prepared in 1985 did not meet the requirements or spirit of the Regulation; it simply listed Parks facilities and provided a general statement that accessibility to non-accessible facilities would be addressed as part of an unspecified future capital plan. The Self-Evaluation neither identified the existing barriers nor described the needed modifications. A survey of ADA accessibility conducted by Parks in 1992 at 139 facilities and for 73 programs identified barriers, including stairs and non-accessible drinking fountains and comfort stations; but it did not describe the modifications needed.

A Transition Plan for bringing Parks facilities into compliance with ADA standards was to be based on the Self-Evaluation. At a minimum, the Plan was to identify physical barriers that were blocking access to a facility or services, describe the methods that would be used to remove those barriers, and specify the schedule for implementing the changes. If implementation was expected to take more than one year, the entity was to identify steps that it planned to take each year toward meeting the standards. All facilities did not have to be ADA-accessible; the Plan could identify alternate methods of achieving compliance, such as the provision of similar services in other accessible facilities or the creative use of technology.

Parks officials indicated that they have neither prepared nor relied on a formal Plan to address ADA requirements; they noted that the sheer number of affected facilities and services makes such planning difficult. They also pointed out that local civic and governmental representatives often seek an active role in the selection, scope, and funding of Parks projects. As a result, they said they consider their policy (meeting ADA accessibility requirements when new facilities are constructed or when major alterations are made on existing ones) to be more in line with the funding mechanisms for the projects.

However, this approach does not meet the requirements or intent of the Regulation. It results in neither the identification or assessment of all facilities and services that need to be made accessible nor the establishment of a timetable for providing such accessibility. Also, Parks has not defined a "major alteration," thereby allowing discretion in the choice of accessibility elements to be incorporated into each project. Without such criteria, the variability in the size and function of Parks facilities can lead to inconsistent interpretation of the need for accessibility alterations. For example:

- During our field observations at Maria Hernandez Park (Brooklyn), Dr. Martin Luther King, Jr. Park (Brooklyn), and Midland Beach Playground (Staten Island) in

December 2004 and January 2005, we observed wheelchair-accessible ramps leading to comfort stations that did not have ADA-compliant stalls.

- During the 9 years that ended in June 2004, Parks spent more than \$19 million on 36 completed projects at Riverside Park, a large park that stretches from West 72nd Street to 158th Street in Manhattan. Notwithstanding the significant amount of capital funds spent on this park, none of its comfort stations is ADA-accessible.
- In May 2000, Parks completed capital improvements to the 79th Street entrance and walkways of Riverside Park at a total cost of \$774,000. When we visited this site, we found that several of the newly finished walkways still led to physical barriers such as stairs and slopes.
- Parks spent about \$34.4 million on 26 completed capital projects at Van Cortland Park (Bronx) during the period of March 1993 through July 2003. However, when we visited the restored Van Cortland Lake area, we noted that the walkways around the lake were not level. Furthermore, we found that a raised threshold in the doorway of a men's comfort station in the nearby Nature Center, which appeared to be ADA-accessible in other ways, blocked access to individuals in wheelchairs.

Development of an overall Transitional Plan for achieving ADA-accessible operations at each facility could help ensure that the types of issues that we found are appropriately considered and incorporated into each of the planned projects. In contrast, a project-by-project approach consumes a significant amount of resources in a few locations, but still does not ensure that the entire facility will achieve ADA compliance within a reasonable amount of time. Parks needs to take a more systematic approach, identifying facilities and services that remain noncompliant and incorporating necessary improvements into its capital planning process. (In response to our preliminary findings on this issue, Parks officials indicated they will develop a Transitional Plan which will identify the facilities that need to be addressed and will become a reference point for discussions with other entities involved in funding Parks capital projects.)

2. Inclusion of ADA Accessibility in New Construction

To determine whether Parks included ADA accessibility in all new construction and major alterations, we selected a judgmental sample of 50 capital projects from a population of 770 projects completed during January 2000 through November 2004. This sample represents projects that were completed at 16 special events facilities, 15 parks, 13 playgrounds, 4 comfort stations, and 2 recreation centers located throughout the City. Our sample comprised major construction and renovation projects, including an \$8.9 million recreational pier, as well as smaller projects, such as a \$23,000 comfort station renovation.

As previously cited, the Regulation generally requires that accessibility standards be incorporated into new construction or alterations initiated after January 26, 1992. For each project Parks undertakes, it prepares a "scope of work" document (scope document) that, according to Park officials, provides a general description of the project and is used primarily to calculate the cost of a project. Specific design elements are added during the development of the project, prior to construction. When the project is complete, Parks prepares a final inspection report indicating

whether the work done is acceptable in terms of the contract requirements. When we reviewed the scope documents for the 50 sampled projects, we found that just 21 had included specific plans for at least one ADA accessibility element; the remaining 29 did not.

When we made field observations of the 21 projects that did include the required specifications, we noted that the ADA-compliant play equipment or swings described in the scope document for one of them, the Russell Sage Playground, had not actually been installed. However, that noncompliance had not been cited in the final inspection report on the project. On the other hand, we noted that two ADA-accessible drinking fountains not specified in the Russell Sage scope document had, in fact, been installed there.

Among the 29 projects lacking plans that specifically included ADA elements were one at the Queens County Farmhouse and another at Gorman Playground. Scope documents for the Queens County Farmhouse involved restoration work on the Greenhouse and also indicated that the facility had a damaged ramp. The scope document did not specify the work that was to be done on the ramp. However, we observed access to the ramp, which was located behind the Greenhouse, was obstructed for an individual in a wheelchair because such individual could reach it only by crossing a grassy area. The second example, the Gorman Playground project, cost \$654,000 and involved reconstruction of basketball and handball courts, game tables, and seating areas. However, we found that the comfort stations at Gorman Playground were not accessible and had not been included in the project.

While the scope documents for these 29 capital projects did not specifically require ADA elements, we found that, nevertheless, they were often included in the actual work. For example, 18 of these projects included the installation of drinking fountains that we observed to be ADA-accessible.

Our review indicates that Parks needs to provide greater oversight to ensure that ADA aspects are considered and included as appropriate in its capital projects; and to ensure that Parks' intentions to provide ADA-required accessibility in specific projects are achieved.

3. ADA Coordinator and Grievance Procedures

The Regulation requires each public entity that employs 50 or more persons to designate at least one employee to coordinate all of its ADA implementation efforts and to investigate any complaints made to the entity about alleged noncompliance with ADA requirements. It also requires the adoption and publication of a grievance procedure that will facilitate the prompt and equitable resolution of complaints alleging ADA noncompliance.

Parks has not complied with these requirements. A coordinator has not been designated, and a grievance procedure has not been established that would identify an ADA-related complaint. At present, correspondence sent directly to a Parks facility is handled independently at that location. It is not tracked in a centralized database. While Parks policy is to respond to correspondence within 10 days, it does not identify ADA complaints, a function that could be performed by an ADA Coordinator.

In 2003, Parks did establish an ADA Advisory Group, which has begun to evaluate the accessibility of existing facilities and services and to seek new ways access can be improved at all Parks facilities. This group is also expected to educate Parks employees about ADA requirements, but its capacity is more limited than the ADA Coordinator's. For example, it is not involved in, or responsible for, investigations of ADA-related complaints.

4. Information Guiding Public to ADA-Accessible Facilities and Services

The applicable laws do not require that all Parks facilities and services be ADA-accessible, so long as similar services are provided at other accessible locations; but the agency is required to help the public locate those that do meet the requirements. Parks needs to be more active in publicizing its ADA-accessible services, either through its website or through pamphlets or maps and signage located at the facilities.

The placement of adequate signage can ensure that interested persons are able to obtain information about accessible services, activities, and facilities. According to the Regulation, a public entity must post the international symbol for accessibility at each accessible entrance of a facility. It must also provide signage at all inaccessible entrances to each of its facilities, directing users to an accessible entrance or to a location where they can obtain information about alternative accessible facilities.

We saw neither international symbols indicating accessibility, nor signage directing users to an ADA-accessible entrance or facility, at any of the 50 Parks sites we visited during December 2004 and January 2005. Although Prospect Park in Brooklyn had maps posted at the entrances providing information on ADA-accessible services, it did not have signage throughout the facility. The Central Park Arsenal entrance also displayed a map. However, it showed the locations of various landmarks and comfort stations, but did not indicate whether they were ADA-accessible. Parks officials interviewed during our site visits told us they were unaware of the signage requirement.

Proper signage is important both for guiding disabled patrons to ADA-accessible facilities and services and for steering them away from potentially dangerous conditions. For example, during our visit to Riverside Park, we found no posted information indicating the locations of ADA-accessible facilities or services. However, we did encounter physical barriers such as non-accessible comfort stations, and excessive slopes, steps, and stairs. In addition, while reviewing 11 complaint letters to the Parks Commissioner's Office that had been provided for our examination, we found that five included ADA-related complaints. One of the five was a letter from a disabled individual who reported being injured at a Manhattan park that had not posted such signage.

Parks should make more effective use of its Internet website for sharing information with the public on the accessibility of its facilities and services. Even though certain facilities, including some playgrounds and zoos, are labeled clearly on the site, others are not. We found no such guidance on the website for most of Parks' many parks, recreation centers, golf fields, ballparks, or swimming pools. There are no maps indicating ADA-accessible services and facilities, including comfort stations; instead, the site directs users to telephone City Information (311 Directory). As of January 2005, Parks had provided the City Information operators with ADA information only for

parks and playgrounds. Individuals who are interested in other facilities would have to telephone the individual site directly to request that guidance.

In contrast, we noted that the Internet website maintained by the New York State Office of Parks, Recreation and Historic Preservation highlights its agency's ADA-accessible facilities and services. For example, on the pages describing Harriman Park, the user can obtain information about Harriman's ADA-accessible services and facilities such as beaches, food stands, picnic areas, and fishing platforms.

Recommendations

1. *Establish a detailed Transitional Plan that identifies planned actions and timetables for making Parks facilities and services ADA-compliant. Establish a process for keeping the Plan current.*
2. *Ensure that ADA accessibility is incorporated in all new and major alteration projects. Scope documents should always specify the element that must be ADA-accessible.*
3. *Establish written guidelines for major alteration work, based on a dollar threshold or scope of work, that specify the projects that must include ADA accessibility components.*
4. *Appoint an ADA Coordinator to oversee all ADA implementation efforts and to identify and investigate complaints.*
5. *Develop grievance procedures for handling complaints alleging ADA noncompliance.*
6. *Enhance the Parks Internet website to provide the public with more information about ADA-accessible facilities and services within the system.*
7. *Post international signage for accessibility at each accessible entrance of a facility. Provide signage at all inaccessible entrances to each facility, directing users to an accessible entrance or to a location where they can obtain information about alternative accessible facilities.*

A draft copy of this report was provided to Parks officials for their review and comment. Their comments have been considered in preparing this report and are included as Appendix A. Parks officials indicated they are committed to providing accessible facilities. They felt the report did not recognize the challenge of adapting such a large park system to current standards or acknowledge all the efforts undertaken by Parks to improve accessibility. Nevertheless, Parks officials concurred with all of our recommendations and indicated they will help Parks better serve people with disabilities.

Within 90 days after final release of this report, we request that the Commissioner of Parks report to the State Comptroller, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were Cindi Frieder, Myron Goldmeer, Alina Mattie, Diane Gustard, Jeny Varghese, and Marticia Madory.

We wish to thank Parks management and staff for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Frank J. Houston
Audit Director

cc: Frank D'Ercola



City of New York
Parks & Recreation

Adrian Benepe
Commissioner

July 11, 2005

The Arsenal
Central Park
New York, New York 10021

David L. Stark
Chief Fiscal Officer

(212) 360-8265
david.stark@parks.nyc.gov

Mr. Frank J. Houston
Audit Director
Office of State Services, State Audit Bureau
123 William Street-21st Floor
New York, NY 10038

Thank you for forwarding your draft report (2004-N-6) on Parks' compliance with the Americans with Disabilities Act (ADA) for our comments before its public release.

We are gratified that the report found that many of Parks' facilities have been upgraded to improve accessibility. We are also pleased that you have considered our comments to the preliminary draft in preparing the final draft of the audit. However, the report does not acknowledge all of the efforts undertaken by Parks to improve accessibility, recognize the challenge of adapting an enormous park system developed over a period of 200 years to current regulatory standards and unfairly criticizes efforts to add additional accessible elements that were not necessarily required in the original scope of work for several projects. Nevertheless, Parks agrees with all of your recommendations, including the additional recommendation from the final draft regarding posting signs at accessible entrances, and will endeavor to implement them. Our implementation plan will follow within 90 days of the release of this report.

Parks and Recreation is committed to providing facilities that are accessible to all members of the public and has made significant progress over the last 12 years towards that goal. We appreciate the insights, findings and observations provided by your office. These recommendations will strengthen our program and help us better serve people with disabilities.

Sincerely,

Frank D'Ercola
Deputy Chief Fiscal Officer

www.nyc.gov/parks