



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS
32 OLD SLIP, 26TH FLOOR
NEW YORK, NEW YORK 10005

TIMOTHY C. J. BLANCHARD
DIRECTOR
NEW YORK OFFICE

September 23, 2015

James Harter
Superintendent
Charlotte Valley Central School District
15611 State Highway 23
Davenport, New York 13750

Re: Case No. 02-15-1246
Charlotte Valley Central School District

Dear Mr. Harter:

This letter is to notify you of the determination made by the U.S. Department of Education, New York Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Charlotte Valley Central School District (the District). The complainant alleged that the District's school building is inaccessible to individuals with disabilities because it lacks an accessible entrance (Allegation 1); a sufficient number of designated accessible parking spaces (Allegation 2); and accessible routes to (a) the playground and (b) the tennis courts (Allegation 3).

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the U.S. Department of Education (the Department). OCR also is responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35. Under the ADA, OCR has jurisdiction over complaints alleging discrimination on the basis of disability that are filed against certain public entities. The District is a recipient of financial assistance from the Department, and is a public elementary and secondary education system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

The regulation implementing Section 504, at 34 C.F.R. § 104.21, provides that “[n]o qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.” The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149.

In its investigation, OCR reviewed documentation that the complainant and the District provided. Additionally, OCR conducted an on-site inspection of the entrance to the District’s school building; the exterior route to the designated accessible entrance from the school bus drop-off point; the designated accessible parking spaces for the Front Parking Lot and the West Wing Parking Lot¹; and the exterior route(s) to the playground and the tennis courts. OCR made the following determinations.

The main school building (the west wing) was constructed in 1938; and the attached east wing of the building and sidewalk were added in 1963. The regulation implementing Section 504, at 34 C.F.R. §104.22, categorizes facilities constructed on or before June 3, 1977, as “existing facilities”. Accordingly, the main school building and east wing (collectively, “the School”) are “existing facilities” under the regulation implementing Section 504.² The regulation implementing Section 504 requires a recipient to operate each program or activity conducted in existing facilities so that the program or activity, when viewed in its entirety, is readily accessible to individuals with disabilities.³ Accordingly, each program or activity operated in the School, when viewed in its entirety, must be readily accessible to individuals with disabilities. The regulation implementing Section 504 does not require a recipient to make structural changes to existing facilities. A recipient may comply through means such as redesign of equipment, or reassignment of classes or other services to accessible buildings or locations. Where programs or activities cannot or will not be made accessible using alternative methods, structural changes may be required in order for recipients to comply.

The District installed the tennis courts and the sidewalk route to the tennis courts in 1985-1986; resurfaced the West Wing Parking Lot in 1985-1986, restriped the West Wing Parking Lot in 2014, and installed the playground equipment in 2000-2001. The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as “new construction.” Accordingly, OCR determined that the West Wing Parking Lot, tennis courts, and playground equipment are new construction under the regulation implementing Section 504.⁴ The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.⁵ The regulation implementing Section 504, at 34 C.F.R. § 104.23, requires that all facilities constructed or alterations to existing facilities made after January 18, 1991, be in compliance with the Uniform Federal Accessibility Standards (UFAS), or it must be clearly evident that equivalent access is provided to meet the requirements of Section 504, such as

¹ The School originally had another parking lot; the East Wing Parking Lot. The District informed OCR that the District stopped using the East Wing Parking Lot for parking in 2014. OCR determined that it is now designated for school bus parking only and not designated for use by student(s)/staff or visitor(s). The East Wing Parking Lot was re-surfaced to obscure the original parking spaces, which were partially visible due to weathering; however District staff advised OCR that only school buses use the East Wing Parking Lot.

² These areas are also existing facilities under the ADA. Under the ADA, an existing facility includes facilities that were constructed, or for which construction was commenced, prior to January 26, 1992, the effective date of the regulation implementing the ADA.

³ The ADA includes a similar requirement for public entities at 28 C.F.R. § 35.149-35.150.

⁴ Under the regulation implementing the ADA, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered “new construction”. Accordingly, the playground and route to the playground are new construction under the ADA; but the tennis courts, route to the tennis courts, and the West Wing Parking Lot are “existing facilities” under the ADA.

⁵ The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).⁶ Accordingly, the West Wing Parking Lot, playground equipment, and route to the playground equipment must be in compliance with UFAS, ADAAG or equivalent standards. The American National Standards Institute (ANSI) guidelines apply to the tennis courts and sidewalk route leading to the tennis courts, as ANSI was the accessibility standard in place at the time these were constructed.

With respect to Allegation 1, the complainant alleged that the School lacks an accessible entrance. The School's main entrance is not accessible, because it requires the negotiation of a series of stairs. The designated accessible entrance for the School is located in the east wing, adjacent to the Front Parking Lot.⁷ The designated accessible entrance is not immediately visible from the main entrance. OCR determined that there is no directional signage to the designated accessible entrance adjacent to the Front Parking Lot. In addition, the designated accessible entrance itself lacks appropriate signage bearing the international symbol of accessibility. OCR determined that the designated accessible entrance is otherwise accessible.

To reach the School's designated accessible entrance, mobility impaired individuals must use the sidewalk adjacent to the Front Parking Lot. OCR determined that the surface of this sidewalk is firm, stable and wide enough to provide wheelchair access; however, there is a change in the level of the sidewalk exceeding one quarter of an inch located before the entrance door. OCR also determined that the entrance doors to the designated accessible entrance are kept locked, and there is no mechanism or procedure in place to ensure that mobility impaired individuals can make use of the entrance.

Based on the above, OCR determined that qualified individuals with disabilities are excluded from participation in the programs and activities conducted in the School, because of the compliance issues OCR identified regarding the designated accessible entrance and the route leading thereto from the Front Parking Lot; i.e., the lack of signage, change in level of the sidewalk route leading to the accessible entrance from the Front Parking Lot, and the lack of a mechanism or procedure to facilitate entry at the designated accessible entrance. Accordingly, the District is not in compliance with the regulations implementing Section 504, at 34 C.F.R. § 104.21, and the ADA, at 28 C.F.R. § 35.149.

With respect to Allegation 2, the complainant alleged that the School lacks a sufficient number of designated accessible parking spaces. OCR determined that the District has two parking facilities serving the School, the Front Parking Lot and the West Wing Parking Lot.

As stated above, the Front Parking Lot serves the School's designated accessible entrance, is used by visitors to the School, and has a total of five parking spaces, two of which are designated accessible; but neither is van accessible. According to the applicable accessibility standards, one

⁶ Pursuant to the regulation implementing the ADA, at 28 C.F.R. § 35.151, new construction or alteration of existing facilities commenced after January 26, 1992, must be in conformance with UFAS, ADAAG, or equivalent standards. Beginning March 15, 2012, all new construction or alterations of existing facilities must conform to the 2010 ADA Standards for Accessible Design (2010 Standards).

⁷ The designated accessible entrance has not been altered since it was constructed in 1963. The District informed OCR that the main entrance to the school building has been designated as "historical" by the New York Historical Society and could not be altered.

accessible space is required, but it must be van accessible. The designated accessible parking spaces have access symbols painted on the pavement surface, but lack pole signage. In addition, the designated accessible spaces do not have access aisles. OCR determined that the sidewalk opposite the designated accessible parking spaces and leading to the designated accessible entrance is not firm, stable and slip-resistant, and lacks a curb cut. In the absence of curb cut, a wheelchair user must travel the length of a 50' driveway to gain access to the adjacent sidewalk's curb cut located at the end of the sidewalk; and then travel back the same length to enter the designated accessible entrance.

The West Wing Parking Lot is used by staff, students, and visitors to the School and has a total of 50 parking spaces, two of which are designated as accessible; but neither is van accessible. According to the applicable accessibility standards, two spaces are required to be accessible; one of which must be van accessible. The designated accessible parking spaces have access symbols painted on the pavement surface, but lack pole signage. The designated accessible parking spaces also lack access aisles, and neither is designated as van accessible. Additionally, the sidewalk adjacent to the accessible parking spaces on the route to the accessible entrance lacks a curb cut.

Based on the above, OCR determined that the Front Parking Lot and West Wing Parking Lot are not compliant with the regulations implementing Section 504 and the ADA with respect to the number of van accessible spaces, access aisles, signage, and curb cuts.

With respect to Allegation 3, the complainant alleged that the School lacks accessible routes to the (a) playground and (b) tennis courts.

With respect to the designated accessible route to the playground area, OCR determined that it consists of a stretch of paved sidewalk from the school building leading to a short, unpaved, grassy area between the paved sidewalk and the edge of the play area. There is no continuous accessible route to the newly constructed playground equipment. Accordingly, OCR determined that the route to the newly constructed playground area is not compliant with the regulations implementing Section 504 and the ADA.

The designated accessible route to the tennis courts is a paved sidewalk leading from the west wing of the school building to the tennis courts. OCR determined that the paved sidewalk surface is continuous, firm, stable, and slip-resistant, and provides wheelchair access; and the slope leading from the sidewalk to the tennis court's door was within the acceptable range. Accordingly, OCR did not identify any compliance issues with respect to the accessible route to the tennis courts.

On September 21, 2015, the District agreed to implement the enclosed resolution agreement, which addresses the compliance issues identified in this letter. OCR will monitor the implementation of the resolution agreement. If the District fails to implement the terms of the resolution agreement, OCR will resume its 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 harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions about OCR's determination, please contact Richard Anderson, Compliance Team Investigator, at (646) 428-3781 or richard.anderson@ed.gov; or James Moser, Compliance Team Attorney, at (646) 428-3792 or james.moser@ed.gov.

Sincerely,

/s/

Timothy C. J. Blanchard

Encl.

cc: Wendy K. DeWind, Esq.