



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

REGION IV
ALABAMA
FLORIDA
GEORGIA

61 FORSYTH ST., SOUTHWEST, SUITE 19T10

August 15, 2016

Via US Mail and Email (dweeks@dcbe.org)

Dr. Danny L. Weeks, Director of Schools
Dickson County School District
817 N. Charlotte Street
Dickson, TN 37055

Re: Complaint #04-16-1289

Dear Dr. Weeks:

On March 1, 2016, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received the above-referenced complaint the Complainant filed against the Dickson County School District (District) alleging discrimination on the basis of disability at Dickson Middle School (School). Specifically, the Complainant alleged that the School's parking lot does not have appropriate designated accessible parking spaces, including a van accessible space.

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, 34 C.F.R. Part 104, which prohibits discrimination on the basis of disability by recipients of Federal financial assistance; and Title II of the Americans with Disabilities Act of 1990 (Title II), as amended, 42 U.S.C. §§ 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public entity, the District is subject to Section 504 and Title II.

Based on the allegation, OCR investigated whether the School's parking lot is accessible to or usable by individuals with disabilities in compliance with the Section 504 implementing regulation at 34 C.F.R. § 104.21 – 104.23 and the Title II implementing regulation at 28 C.F.R. § 35.149 – 35.151.

Before OCR completed its investigation, the District offered, and OCR agreed, to resolve the allegation by entering into a resolution agreement. Pursuant to Section 302 of OCR's *Case Processing Manual*, a complaint "may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the allegations and issues *and* OCR determines that it is appropriate to resolve them with an agreement during the course of an investigation." Set forth below is a summary of the evidence that OCR obtained thus far in its investigation, which serves as the basis of the resolution agreement entered into by the District.

Legal Standards

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively, state that no qualified individual with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by a recipient because the recipient's facilities are inaccessible to or unusable by persons with disabilities. The Section 504 and Title II regulations contain different standards, based on when a facility was constructed, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

Accessibility of Existing Facilities

The standards of program access that apply to an existing facility are found at - 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Program access requires that an educational institution operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. See 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirements for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities - 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Accessibility of New Construction

The implementing regulations of Section 504, at 34 CFR § 104.23, and Title II, at 28 CFR § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504), or January 26, 1992 (Title II), respectively. These facilities are termed "new construction or alterations." The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineates the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities

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constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineates UFAS or *the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards), which became effective March 15, 2011. Title II, at 28 C.F.R. §35.151(c)(3), now provides, “If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 [ADA] Standards.”

Minimum number of accessible parking spaces. According to ADAAG 4.1.2(5)(a), if parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces complying with 4.6 shall be provided in each such parking area in conformance with the table below. Spaces required by the table need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

Total Parking in Lot	Required Minimum Number of Accessible Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 plus 1 for each 100 over 1000

Minimum size of accessible parking spaces and access aisles. Pursuant to ADAAG 4.6.3, accessible parking spaces shall be at least 96 inches wide. Parking access aisles shall be part of an accessible route to the building or facility entrance. Two accessible parking spaces may share a common access aisle. Pursuant to ADAAG 4.1.2(5)(a), except as provided in 4.1.2(5)(b), access aisles adjacent to accessible spaces shall be 60 inches wide minimum. Pursuant to ADAAG 4.1.2(5)(b), one in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 inches wide minimum and shall be designated “van accessible” as required by 4.6.4. ADAAG A4.6.3 provides that the access aisle must be connected to an accessible route to the appropriate accessible entrance of a building or facility. The parking access aisle must either blend with the accessible route or have a curb ramp complying with 4.7. Such a curb ramp

opening must be located within the access aisle boundaries, not within the parking space boundaries.

Location of parking spaces. Pursuant to ADAAG 4.6.2, accessible parking spaces serving a particular building shall be located on the shortest accessible route of travel from adjacent parking to an accessible entrance. In parking facilities that do not serve a particular building, accessible parking shall be located on the shortest accessible route of travel to an accessible pedestrian entrance of the parking facility. In buildings with multiple accessible entrances with adjacent parking, accessible parking spaces shall be dispersed and located closest to the accessible entrances.

Signage for parking spaces. Pursuant to ADAAG 4.6.4, accessible parking spaces shall be designated reserved by a sign showing the symbol of accessibility. Spaces complying with 4.1.2(5)(b) shall have an additional sign designating them “Van-Accessible” mounted below the symbol of accessibility. Such signs shall be located so a vehicle parked in the space cannot obstruct them.

Summary of Investigation

The Complainant alleged that the parking lot serving the School does not contain an adequate number of accessible spaces and no van accessible spaces.

OCR’s investigation to date revealed that the parking lot serving the School contains a total of 84 spaces. The District described these spaces as including seven designated accessible spaces; however, none of the existing accessible spaces are van accessible.

The District, through the Superintendent, the Director of Buildings and Grounds, and the Director of Student Services, reported being unaware of the date when the parking lot was last modified; the District reported, however, that the parking lot has not been modified in the last six years. The District, however, requested to resolve this complaint by modifying the School’s parking lot in compliance with the ADAAG standards.

OCR did not complete the investigation, which requires a visit to the School, to determine whether the parking lot serving the School is in compliance with Section 504 and Title II, prior to receiving the request from the District to resolve this matter by bringing the parking lot into compliance with the ADAAG standards. However, OCR’s investigation to date identified areas of concern, particularly in light of the District’s acknowledgment that the parking lot serving the School does not contain any van accessible spaces, which the District has agreed to remedy.

Resolution Agreement

To remedy the allegation raised by OCR’s complaint, the District agreed to implement the provisions of the attached Resolution Agreement (Agreement), which when fully implemented, will resolve the issue in this complaint. Pursuant to the terms of the Agreement, the District will ensure that the School’s parking lot has the minimum number of designated disabled parking spaces, “van accessible” spaces, and access aisles, in accordance with ADAAG (provisions 1-2

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of the Agreement); ensure that all accessible parking spaces have appropriate signage (provision 3 of the Agreement); and ensure that the location of all such designated accessible parking spaces is located on the shortest accessible route of travel from adjacent parking to an accessible entrance, and that for buildings with multiple accessible entrances with adjacent parking, accessible parking spaces are dispersed and located closest to the accessible entrances (provision 4 of the Agreement).

The Agreement is aligned with the complaint allegation and the information obtained thus far and is consistent with applicable regulations under Section 504 and Title II. OCR will monitor the District's implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

This concludes OCR's investigation of the complaint and 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. The Complainant may file a private lawsuit in federal court regardless of whether OCR finds a violation.

This letter sets forth OCR's determination in an individual 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 duly authorized OCR officials and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records, upon request. If we receive such a request, we will seek to protect, to the extent possible, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

Finally, OCR reminds the District that intimidation or retaliation against complainants by recipients of Federal financial assistance is prohibited. No recipient may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the laws OCR enforces or because one has made a complaint or participated in any manner in an investigation in connection with a complaint.

OCR will proceed with monitoring the Agreement, effective the date of this letter. OCR is committed to a high quality resolution of every case. If you have any questions regarding this complaint, please contact Ms. Lorraine Irier, the assigned attorney, at (404) 974-9349, or, me, at (404) 974-9376.

Sincerely,

/s/

Arthur Manigault, Esq.
Compliance Team Leader