

UNITED STATES DEPARTMENT OF
EDUCATION
OFFICE FOR CIVIL RIGHTS

5 POST OFFICE SQUARE, 8TH FLOOR



Pamela Beaudoin
Superintendent
Manchester Essex Regional School District
36 Lincoln Street
Manchester-by-the-Sea, MA 01944

Re: Complaint No. 01-16-1003
Manchester Essex Regional School District

Dear Superintendent Beaudoin:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR) regarding the above-referenced complaint filed against the Manchester Essex Regional School District (the District). The Complainant alleged that a student (Student) was discriminated against based on her disability, which requires her to use a wheelchair. Specifically, the Complainant alleged that the XXXXXXXXXX building where the Student attends school does not have designated accessible parking and does not have an accessible route to the XXXXXXXXXX building entrance. As explained below, prior to OCR completing its investigation, the District requested to resolve the complaint by entering into the enclosed voluntary Resolution Agreement (Agreement).

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. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 et seq., and its implementing regulation at 28 C.F.R. Part 35. Under Title II, 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 U.S. Department of Education and is a public elementary and secondary education system. Therefore, OCR had jurisdictional authority to investigate this complaint under Section 504 and Title II.

Summary of Preliminary Investigation:

OCR spoke with the Complainant several times to clarify her complaint allegations regarding the accessibility of the XXXXXXXXXX building's parking area. OCR also received and reviewed various District policies, including: "Policy Against Harassment," which defines various types of conduct that constitutes harassment and includes a complaint investigation/grievance procedure for complaints of harassment; "Nondiscrimination Notice"; "Nondiscrimination on the Basis of

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by fostering educational excellence and ensuring equal access.

Handicap” statement; and a copy of the District’s “Parent’s Notice of Procedural Safeguards.” OCR also reviewed correspondence between District staff and the Complainant regarding the Student. Finally, OCR reviewed a description of the recent construction project for the parking lot and walkways/driveways surrounding the XXXXXXXXXX undertaken by the Massachusetts Department of Transportation (MA DOT) and Town of Manchester; pictures and drawings of the parking lot, including accessible spaces, ramps, curb cuts and accessible routes; correspondence from the District to the Complainant outlining steps taken to address the concerns she raised to the District about the accessibility of the parking lot; and correspondence between the District, MA DOT, contractors, and architects regarding the feasibility of creating an additional accessible parking space, wheelchair ramp, and curb cut.

On March 17, 2016, prior to the completion of OCR’s investigation, the District requested to enter into a resolution agreement to resolve the allegations, in accordance with Section 302 of OCR’s Case Processing Manual. OCR determined that it was appropriate to resolve the complaint allegations with the enclosed Agreement.

Legal Standard:

The program accessibility requirements of the Section 504 implementing regulation are found at 34 C.F.R. §§104.21-104.23; comparable sections of the Title II implementing regulation 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 that no qualified person with a disability shall, because a recipient’s facilities are inaccessible to or unusable by persons with disabilities, be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity of the recipient.

Section 104.23 of the Section 504 regulation, and §35.151 of the Title II regulation, are applicable to “new construction or alterations,” defined as any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. The regulations provide that each facility or part of a facility constructed by, on behalf of, or for the use of the recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by persons with disabilities. The regulations further provide that each facility or part of a facility altered by, on behalf of, or for the use of the recipient in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities.

The regulations specify the minimum standard for determining the accessibility of new construction and alterations. Pursuant to the Section 504 regulation at 34 C.F.R. §104.23(c), the Uniform Federal Accessibility Standards (UFAS) set forth the designated standard for facilities constructed or altered on or after January 18, 1991. The Section 504 regulation further provides that a recipient may depart from the particular requirements of these architectural standards if substantially equivalent or greater access and usability are provided. The Title II regulation, at 28 C.F.R. §35.151(c), identifies the 2010 Standards for Accessible Design (ADA 2010 Standards), which incorporate the 2004 ADA Standards for Accessible Design (ADAAG; 36 CFR Part 1191) as a minimum standard for determining accessibility for facilities constructed or altered on or after March 15, 2012.

Through its investigation, OCR learned that construction for the new parking areas, roadways and walkways at the XXXXXXXXXX began in the summer of 2015. Therefore pursuant to the requirements pertaining to “new construction” under Section 104.23 of the Section 504 regulations

and Section 35.151 of the Title II regulations, OCR's investigation focused on whether the parking areas and accessible route at the XXXXXXXXXX complied with corresponding accessibility standards.

OCR generally refers to the 2010 Standards for assessing accessibility of recent construction or alterations. The 2010 Standards, specifically Section 208 of ADAAG, require a specific number of accessible parking spaces depending on the total number of parking spaces in a parking facility. Where more than one parking facility is provided on a site, the number of accessible spaces provided on that site shall be calculated according to the number of spaces required for each parking facility. For a parking facility that has between 1 and 25 parking spaces, there must be at least one accessible parking space and such space(s) must meet specific dimension, surface, clearance, and other requirements. Furthermore, the 2010 Standards require that accessible parking spaces must be located on the shortest accessible route leading to an accessible entrance. Where parking serves more than one accessible entrance, accessible parking spaces shall be dispersed and located on the shortest accessible route to the accessible entrances. Lastly, with regard to accessible routes, the 2010 Standards require that at least one accessible route shall be provided within the site from accessible parking spaces, public streets, and sidewalks to the accessible building/facility entrance they serve. Additionally, accessible routes must comply with applicable slope and surface requirements.

During the investigation, OCR learned that the Complainant reported her concerns to the District about the accessibility of the parking area at the XXXXXXXXXX. Accordingly, OCR notes that Section 104.7(b) of the 504 regulation and Section 35.107(b) of the Title II regulation require the District to adopt grievance procedures that provide for the prompt and equitable resolution of complaints of disability-based discrimination.

Resolution:

In response to the above-stated complaint allegations, the District explained that it is in the process of constructing additional accessible parking closer to the XXXXXXXXXX, as well as an additional accessible route to the entrance of the XXXXXXXXXX. The District also reported taking other steps to identify any further potential accessibility concerns for the Student, such as seeking the assistance of an ADA consultant to review the XXXXXXXXXX school the Student will attend next school year. Additionally, OCR shared with the District the Complainant's contention that she was unaware of the District's ongoing efforts to resolve her concerns, and OCR noted for the District the requirements under Section 504 and Title II that the District establish procedures for resolving disability-based grievances promptly and equitably. Accordingly, the District expressed a willingness to resolve the complaint allegations, and any related concerns, in a Voluntary Resolution Agreement. Specifically, the District has agreed to: develop a plan for the design and construction of an additional accessible parking space and route, which will include an assessment of the current accessibility of its parking area¹; meet with the Complainant to discuss any ongoing or remaining concerns regarding accessibility of the parking area and accessible routes; and to develop and adopt

¹ The District has represented to OCR that the Massachusetts Department of Transportation construction project at the parking lot at issue must be completed before the District can initiate the additional construction required by the enclosed Resolution Agreement. OCR has notified the District that OCR has the authority to revise the timeframes stipulated in a resolution agreement when the actions by third parties or other unforeseen circumstances prolong timely compliance, so long as a recipient demonstrates it is taking and continues to take all lawful steps to timely comply.

grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any form of discrimination on the basis of disability.

Conclusion:

OCR has determined that the Agreement is aligned with the allegations and is consistent with the laws and regulations OCR enforces. OCR will monitor implementation of the Agreement, and will notify the parties in writing of the monitoring closure, once it determines that the District has fulfilled the terms of the Agreement. If the District fails to comply with the terms of the Agreement, OCR will resume its investigation.

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. 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 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 that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions regarding OCR's determination, please contact Diana Otto, Equal Opportunity Specialist, at 617-289-0073 or diana.otto@ed.gov.

Sincerely,

_____/s/_____
Diane M. Henson
Regional Director

cc: Catherine Lyons, Esq.

Enclosure