



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

May 1, 2020

Superintendent Lisa Witte
By email: lwitte@mrsd.org

Re: Complaint No. 01-20-1125
Monadnock R.S.D. / SAU #93

Dear Superintendent Lisa Witte:

This letter is to advise you of the outcome of the complaint that the U.S. Department of Education (Department), Office for Civil Rights (OCR) received against Monadnock R.S.D. / SAU #93 (District). The Complainant alleged that the District discriminates on the basis of disability because the Emerson School (School) does not have a sufficient number of accessible parking spaces for persons with disabilities. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the complaint by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. Section 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in any program or activity receiving federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems and institutions, regardless of whether they receive federal financial assistance from the Department.

Summary of Preliminary Investigation

After OCR opened its investigation, the District promptly provided preliminary information and photographs in response to a request for information. The photographs showed approximately 15 parking spaces in a small lot near the front entrance of the School, with no spaces clearly designated as accessible parking spaces. The photograph also showed 44 parking spaces in a large lot near the side entrance of the School. The District asserted that the two spaces closest to the side entrance in the larger lot were designated as accessible parking spaces, but it conceded that those spaces were not clearly designated.

Legal Standard

The Section 504 implementing regulation at 34 C.F.R. § 104.4(a) provides that no qualified person with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that benefits from or receives federal financial assistance. Title II's implementing regulation

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contains a similar provision for public entities at 28 C.F.R. § 35.130(a). Prohibited discrimination by a recipient or public entity includes denying a qualified person with a disability the opportunity to participate in or benefit from the aids, benefits, or services offered by that recipient or public entity; affording a qualified person with a disability an opportunity to participate in or benefit from aids, benefits, or services that is not equal to that afforded others; and providing a qualified person with a disability with aids, benefits, or services that are not as effective as those provided to others. 34 C.F.R. § 104.4(b)(1)(i)-(iv); 28 C.F.R. § 35.130(b)(1)(i)-(iv).

The Section 504 implementing regulation at 34 C.F.R. § 104.21 states 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, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504 applies. The Title II regulation at 28 C.F.R. § 35.149, contains a similar provision for public entities.

The regulations contain standards for determining whether a recipient's programs, activities, and services are readily accessible to and usable by individuals with disabilities, depending on whether the facilities¹ are determined to be existing facilities, new construction, or altered construction. The applicable standard depends on the date of construction or alteration of the facility and the nature of any alternation.

Existing Facilities

Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. Under Title II, existing facilities are those for which construction began on or before January 26, 1992. While these dates remain the primary benchmarks for accessibility standards, Appendix A to the Title II regulations clarifies that the classification of a facility under the ADA is "neither static nor mutually exclusive." 28 C.F.R. part 35, Appendix A. In general, a newly constructed facility is subject to the accessibility standards in effect at the time of construction, and as a facility undergoes subsequent alteration, those alterations will be subject to the accessibility standards in effect at that time. *Id.*

New construction and alterations

Under the Section 504 regulation, a facility will be considered new construction if construction began on or after June 3, 1977. Under the Title II regulation, the applicable date for new construction is January 26, 1992. For new construction, the facility or newly constructed part of the facility must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. § 104.23(a); 28 C.F.R. § 35.151(a).

With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the

¹ A "facility" is "all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located." 28 C.F.R. § 35.104.

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. 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Determining which standards apply to a given new construction or alteration depends upon the date the new construction or alterations took place. For an entity covered by Section 504 and Title II, new construction and alterations begun after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations begun between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). *Compare* 45 C.F.R. § 84.23(c) (1977) and 34 C.F.R. § 104.23(c) (1981), *with* 34 C.F.R. § 104.23(c) (2010). New construction and alterations after January 26, 1992, but prior to March 15, 2012, must conform to either UFAS or the 1991 Americans with Disabilities Act Standards for Accessible Design (the 1991 ADA Standards).

The U.S. Department of Justice (DOJ) published revised regulations for Titles II and III of the ADA on September 15, 2010, which went into effect on March 15, 2012. These regulations adopted revised enforceable accessibility standards called the 2010 ADA Standards for Accessible Design (the 2010 ADA Standards), as relevant here, they also included specific technical and scoping regulations for parking lots. The relevant portions for this matter are Chapter 2’s scoping requirements, Chapter 3’s building blocks regarding floor or ground surfaces, Chapter 4’s accessible routes, and Chapter 5’s general site and building elements regarding parking spaces.

The District requested to resolve this matter pursuant to a 302 agreement before providing information on the date the parking lots were constructed or last altered or resurfaced. OCR applied the 2010 ADA Standards because those standards will apply to the alterations initiated under this agreement.

The chart below outlines the number of spaces as required by Standard 208.2 of the 2010 ADA Standards.

Minimum Number of Accessible Parking Spaces

Total Parking Spaces Per Parking Facility	Minimum Accessible Parking Spaces (car & van)	Minimum Van-Accessible Parking (1 of 6 accessible spaces)
1 to 25	1	1
26 to 50	2	1
51 to 75	3	1
76 to 100	4	1
101 to 150	5	1
151 to 200	6	1

Analysis and Conclusion

OCR’s initial investigation established concerns that the parking lots at the School were not compliant with the requirements for accessible parking spaces set forth in the 2010 ADA Standards. Prior to the conclusion of OCR’s investigation and pursuant to Section 302 of OCR’s *Case Processing Manual*, the District expressed an interest in resolving this complaint and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address all of the allegations raised in the complaint. OCR will monitor the District’s implementation of the Agreement.

This concludes OCR’s 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 must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

Abra Francois
Compliance Team Leader

Enclosure

cc: Allen L. Kropp