

October 16, 2014

James Parla, Ed.D.  
Superintendent of Schools  
Hamilton Township School District  
90 Park Avenue  
Hamilton, New Jersey 08690

Re: Case No. 02-14-1248  
Hamilton Township School District

Dear Dr. Parla:

This letter is to notify you of the determination made by the U. S. Department of Education, New York Office for Civil Rights (OCR) in the above-referenced complaint filed against the Hamilton Township School District. The complainant alleged that the following at the District's University Heights Elementary School (the School) are not accessible to individuals with mobility impairments: (a) the route from the School to the playground; (b) the playground equipment; and (c) the interior route to the playground equipment.

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 and activities receiving financial assistance from the U.S. Department of Education (the Department). OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (the 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.

In its investigation, OCR reviewed information the District and the complainant submitted. OCR also conducted an on-site inspection on August 4, 2014.

The complainant alleged that the following at the School are not accessible to individuals with mobility impairments: (a) the route from the School to the playground; (b) the playground equipment; and (c) the interior route to the playground equipment. 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.

OCR determined that the School's playground consists of numerous ground and elevated modular components.<sup>1</sup> The main playground area is located on top of a hill, up an inclined asphalt walkway from an asphalt sporting area that is adjacent to the School; at the top of the hill, various playground components are scattered around the perimeter of a circular asphalt walkway, with grass between the walkway and many of the components. The District advised OCR that the main components of the School's playground were installed in or around July 2001.<sup>2</sup> 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 playground is new construction, as defined by Section 504.<sup>3</sup> The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities.<sup>4</sup> 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 through compliance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities (ADAAG).<sup>5</sup>

The District acknowledged to OCR that the exterior route from the School to the playground is inaccessible to individuals with mobility impairments. As set forth above, the playground equipment is located on a hill, and individuals must use an inclined asphalt path and traverse areas of grass to access many of the playground components. Pursuant to Section 4.3.2(2) of ADAAG, at least one accessible route shall connect accessible buildings, facilities, elements and spaces that are on the same site. Additionally, pursuant to Section 4.3.7 of ADAAG, an accessible route with a running slope greater than 1:20 is a ramp and must comply with all of the requirements of Section 4.8, and nowhere shall the cross slope of an accessible route exceed

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<sup>1</sup> The playground contains the following components, among others: an Eagle's Perch (climbing structure); a Brakeless Space Shuttle (arm hang); two Toss 'N Score Ball Tosses (throwing apparatus), a Bunker Hill Climber (climbing structure); a Space Arch (climbing/hanging structure); a swing set (swinging apparatus); three series of rungs (climbing/hanging structure); one set of rungs and a ladder (climbing/hanging structure); a wall panel with holes (climbing structure); a rock climbing wall (climbing structure); a swivel balancing platform (balancing structure); a slide (sliding apparatus); a steering wheel (driving apparatus); a tube slide (sliding apparatus); and a curved tube (crawling apparatus).

<sup>2</sup> The District did not know the exact date of construction of the playground. However, the District indicated that the main components of the playground were installed in or around July 2001. Therefore, OCR used July 2001 as the date of construction of the playground. The District also did not know which accessibility standards were used when the playground was constructed.

<sup>3</sup> The playground is also new construction as defined by the regulation implementing the ADA, at 34 C.F.R. § 35.151.

<sup>4</sup> The regulation implementing the ADA contains a similar requirement at 34 C.F.R. § 35.151.

<sup>5</sup> 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.

1:50. Moreover, pursuant to Section 4.5.1 of ADAAG, ground and floor surfaces along accessible routes shall be stable, firm, and slip resistant.

During the course of OCR's investigation, the District informed OCR that it is in the process of constructing a playground at the School that will be fully accessible to individuals with mobility impairments. Therefore, because the route from the School to the playground is inaccessible and because the District is constructing a new playground, OCR did not analyze whether the current playground equipment and the interior route to the playground equipment is accessible. Rather, on October 6, 2014, the District entered into the attached resolution agreement to resolve the complaint; pursuant to the agreement, the District will construct a fully accessible playground, with an accessible route from the School to the playground, in accordance with the 2010 ADA Standards for Accessible Design. OCR will monitor implementation of the resolution agreement. If the District fails to comply with the terms of the resolution agreement, OCR will resume its investigation.

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 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 David Krieger, Compliance Team Attorney, at (646) 428-3893 or [david.krieger@ed.gov](mailto:david.krieger@ed.gov); or Michael Goldberg, Senior Compliance Team Investigator, at (646) 428-3817 or [michael.goldberg@ed.gov](mailto:michael.goldberg@ed.gov).

Very truly yours,

Timothy C.J. Blanchard

Cc: XXXX

Encl.