

July 17, 2017

Michael Vanyo  
Superintendent  
Gloversville Enlarged School District  
234 Lincoln Street  
Gloversville, New York 12078

Re: Case No. 02-17-1043  
Gloversville Enlarged School District

Dear Superintendent Vanyo:

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 Gloversville Enlarged School District (the District). The complainant alleged that the District discriminates against individuals with mobility impairments by failing to locate accessible parking spaces on the shortest accessible route of travel to the sports stadium for the Park Terrace Elementary School (the school) campus.

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 educational system. Therefore, OCR has jurisdictional authority to investigate this complaint under both Section 504 and the ADA.

In its investigation, OCR reviewed documentation that the complainant and the District provided. OCR also interviewed the complainant and District staff. Additionally, OCR conducted an on-site inspection of the school campus on March 27, 2017. OCR made the following determinations.

The complainant informed OCR that he is an adult with XXXXXXXXXXXX XXXXX XXXXXXXX who uses XXXXXXX and a XXXXXXX to aid in his mobility; and as a result, he has limited ability to walk any distance. The complainant informed OCR that when he attends football games at the school's sports stadium, he does not park in the parking spaces designated as accessible to individuals with mobility impairments because these spaces are located in a parking lot behind the school building and far from the sports stadium (Lot 1). Therefore, when attending a football game, the complainant parks his car in an asphalt parking area with approximately 30 parking spaces near the concession stand adjacent to the sports stadium (Lot 3), and XXXXXXX XXX XXXX XXXX XXX XXX.<sup>1</sup> The complainant asserted that the District has not provided any parking designated as accessible to individuals with mobility impairments in Lot 3, leaving the area open to anyone who wishes to park there. The complainant stated that on or about October 4, 2016, he attempted to XXXXX a football game XXXX XXX XXX in Lot 3, however, Lot 3 was full. The complainant then attempted to park in another row; but, a school staff member (staff member 1) told him that his car was blocking an ambulance parked in Lot 3 and asked the complainant to leave.<sup>2</sup>

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.

### **The Stadium:**

According to the District, the school's sports stadium was constructed and/or last altered in or around 1980. 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.”<sup>3</sup> Accordingly, the school's sports stadium is considered “new construction” under the regulation implementing Section 504. The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Section 504, 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 Physical Handicapped [ANSI 117.1 – 1961(1971)] as the minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991.<sup>4</sup>

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<sup>1</sup> Due to his disability, the complainant is unable to walk to the bleachers from his parked car in Lot 3. As a result, if he is unable to park in Lot 3 and XXXXX the football game XXXX XXX XXX, he is unable to attend football games.

<sup>2</sup> Staff member 1 offered to transport the complainant to the bleachers via a four-wheeled vehicle; however, the complainant explained to staff member 1 that he would not be able to get out of the vehicle and walk to the bleachers. The complainant additionally stated that he would not be able to return to his vehicle from the bleachers without the assistance of a District staff member.

<sup>3</sup> 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.”

<sup>4</sup> The ANSI standards were revised in 1980.

**Parking Areas:**

OCR determined that there are a total of three parking lots on the school campus, Lots 1, 2 and 3. OCR inspected Lots 1 and 2 during the course of the investigation.<sup>5</sup>

ANSI standard 4.6.2 specifies that parking spaces for individuals with disabilities that serve a particular building shall be located on the shortest possible accessible route to the accessible entrance of the building. There are two parking areas located in the vicinity of the sports stadium. One of the parking areas (Lot 2) is a gravel topped parking area located closest to the school building and near the practice field. The second parking area located in the vicinity of the sports stadium is an asphalt topped parking lot (Lot 3) located near the concession stand. OCR determined that Lot 3 is located closest to the stadium entrance and its intended use is for stadium events; parking is available on a first-come, first-serve basis.

Lot 3 does not currently have any designated accessible parking spaces. According to the District, if paved, Lot 3 would provide approximately 20-25 parking spaces. If the District paves Lot 3, it would need to comply with the current accessibility standards. Beginning March 15, 2012, all new construction must conform to the 2010 ADA Standards for Accessible Design (2010 Standards). Section 208.2 of the 2010 Standards would require at least one accessible parking space for a parking lot with 20-25 parking spaces. Accordingly, OCR has determined that the District is in violation of the regulation implementing Section 504, at 34 C.F.R. § 104.23, because Lot 3, the closest parking lot serving the stadium, is not accessible to individuals with disabilities, as it has no designated accessible parking.

Lot 1 is the main parking lot. It is located next to the school and includes designated accessible parking spaces near the school's main entrance. Lot 1 is used by staff and visitors to the school and is intended to serve the main school building. OCR determined that the school building and the adjacent Lot 1 were constructed in 1952 and some alterations took place in 2008. Accordingly, the school building and Lot 1 are new construction as defined by the regulations implementing Section 504 and the ADA. 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). 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.

Lot 1 has a total of 132 parking spaces, 5 of which are designated accessible, with 3 access aisles interspersed among them. With 132 parking spaces, Lot 1 is required to have at least 5 accessible spaces, one of which must be van accessible (ADAAG Standards, at Section 4.1.2). Lot 1 contained no designated van accessible spaces with the required signage pursuant to ADAAG 4.6.4. All 5 designated accessible parking spaces have markings depicting the symbol

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<sup>5</sup> Lot 3 was not available to OCR for inspection as it was covered in recent snowfall, and the District did not open the gate to the stadium for OCR to inspect it.

of accessibility painted on the pavement of the relevant space; however, none of the 5 spaces contain signage mounted on a pole that would not be otherwise obscured by a vehicle parked in the space. ADAAG 4.6.4 and UFAS 4.6.4 provide that accessible parking spaces shall be designated as reserved by a sign showing the symbol of accessibility and such signs shall be located so they cannot be obscured by a vehicle parked in the space.<sup>6</sup> Additionally, the width of one of the 5 designated accessible parking spaces was less than 96” wide and therefore not in compliance with ADAAG 4.6.3 and UFAS 4.6.3. Lot 1 contains three access aisles for the five accessible parking spaces. The District informed OCR that an area adjacent to parking space 5 marked with yellow striping could also be used as an access aisle. Upon examination, OCR determined that the area marked by yellow striping appears to exist to indicate that cars should not park in the yellow striped areas because it is directly adjacent to an active driveway. Nevertheless, OCR measured the yellow striped area, and determined that if used as an access aisle, it would be compliant with ADAAG 4.6.3 and UFAS 4.6.3<sup>7</sup> Based on the foregoing, OCR determined that Lot 1 is not in compliance with the regulations implementing Section 504 and the ADA because Lot 1 lacks the minimum required number of van accessible parking spaces; the accessible parking spaces are not designated by the appropriate signage; and one of the parking spaces does not meet the minimum width requirements.

Lot 2 was last altered in 2008. Accordingly, OCR determined that Lot 2 is new construction under the regulations implementing Section 504 and the ADA. Lot 2 primarily serves the practice field in addition to the school building and can be used by anyone. Since Lot 2 was last altered in 2008, it must comply with the ADAAG Standards, UFAS or equivalent standards. Lot 2 does not currently have any designated accessible parking spaces. According to the District, if paved, this lot would provide approximately 20-25 parking spaces. The ADAAG Standards, at Section 4.1.2, provide that if parking spaces are provided, parking spaces must comply with Sections 4.1.2 and 4.6. With 25 parking spaces in Lot 2, it is required to have at least 1 accessible space. ADAAG Standards, at Section 4.1.2 and UFAS, at Section 4.1.1. Accordingly, OCR determined that Lot 2 is not in compliance with the regulations implementing Section 504 and the ADA.

On July 7, 2017, the District agreed to implement the enclosed resolution agreement, which addresses the compliance issues, as described above and cited in Appendices A, B, and C pursuant to Section 303 of the Case Processing Manual. OCR will monitor the implementation of the resolution agreement.

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.

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<sup>6</sup> The 2010 Standards do not specifically require that such signs “cannot be obscured by a vehicle parked in the space ” as is specified in UFAS 4.64. Rather Section 502.6 of the 2010 Standards requires that designated accessible parking spaces be identified by a sign including the international symbol of accessibility; and, such signs shall be placed a minimum of 60 inches high.

<sup>7</sup> ADAAG 4.6.3 and UFAS 4.6.3 permit two accessible parking spaces to share a common access aisle. By offering three access aisles for five parking spaces; the District complies with the minimum number of access aisles permitted.

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 individual may file a 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 Joy Purcell, Compliance Team Attorney, at (646) 428-3766 or [joy.purcell@ed.gov](mailto:joy.purcell@ed.gov); or Michele Ginter-Barbara, Compliance Team Investigator, at (646) 428-3816 or [michele.ginter-barbara@ed.gov](mailto:michele.ginter-barbara@ed.gov).

Sincerely,

/s/  
Timothy C. J. Blanchard

cc: XXXXXXXX XXXXXXXXXXXX, Esq.