



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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NEW YORK, NEW YORK 10005

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July 11, 2022

Sent via email only to jmeloch@chcl.org

Dr. Joseph Meloche
Superintendent of Schools
Cherry Hill Public Schools
45 Ranoldo Terrace
Cherry Hill, New Jersey 08034

Re: Case No. 02-21-1301
Cherry Hill Public Schools

Dear Dr. Meloche:

This letter is to notify you of the determination made by the U.S. Department of Education, Office for Civil Rights (OCR), regarding a complaint filed against the Cherry Hill Public Schools. The Complainant alleged that the District discriminates on the basis of disability by failing to provide accessible parking spaces at Henry C. Beck Middle School (the School).

OCR enforces 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 Department. OCR also enforces 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. As a recipient of Federal financial assistance from the Department, the District is subject to Section 504. As a public elementary and secondary education system, the District is subject to Title II.

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.” Title II includes a similar requirement for public entities at 28 C.F.R. § 35.149.

In its investigation, OCR reviewed documentation that the District and the Complainant provided. OCR made the following determinations.

The Complainant alleged that the District discriminates on the basis of disability by failing to provide accessible parking spaces at the School. Specifically, the Complainant asserted that in August 2021, the District repaved and restriped the East parking lot (the East Lot) and did not designate any accessible parking spots in the East Lot. The Complainant also asserted that the designated accessible spaces located in the School's two other parking lots (the West and South Lots) are not accessible; and, the South Lot lacks an access aisle and a curb cut/ramp.

OCR determined that the School has three parking lots: the East, West, and South Lots. The District stated that the original date of the construction of the School's parking lots is unknown. The District advised OCR that it is unaware of any reconstruction or relining of the West and South Lots in at least the past 20 years. The District stated that the East Lot was repaved and relined in August 2021.

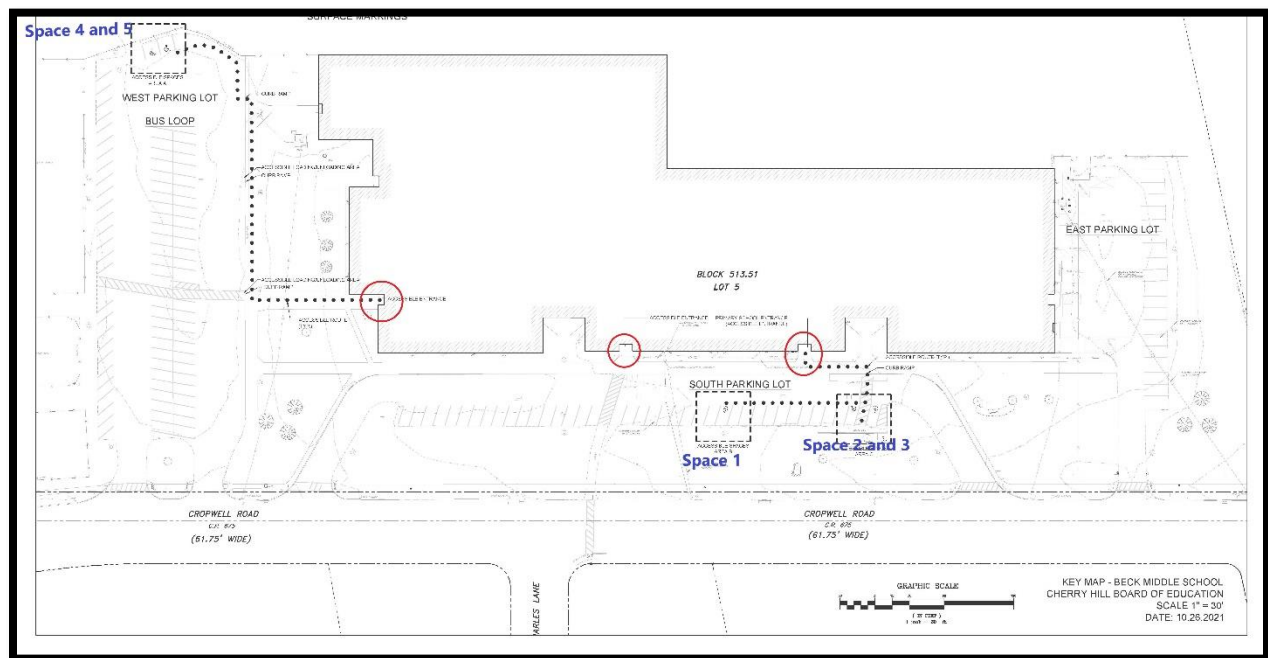
The regulation implementing Section 504, at 34 C.F.R. § 104.23, categorizes facilities constructed or altered by, on behalf of, or for the use of a recipient after June 3, 1977, as "new construction." Under the regulation implementing Title II, at 34 C.F.R. § 35.151, construction or alterations commenced after January 26, 1992, is considered "new construction." Although the District was unsure of when the West and South Lots were last reconstructed or relined, based on OCR's review of the photographs of the parking lots, and OCR's investigation of a previous OCR case, Case No. 02-99-1206, OCR determined that the information appeared to indicate that the South and West Lots were repaved/relined after 2000, and therefore, they are considered "new construction" under Section 504 and Title II. The East Lot is also considered "new construction" under both Section 504 and Title II.

The regulation implementing Section 504 requires that new construction be readily accessible to and usable by individuals with disabilities. The regulation implementing Title II contains a similar requirement at 34 C.F.R. § 35.151. 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 Title II, 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 Americans with Disabilities Act Standards for Accessible Design (2010 ADA Standards).

With regard to parking, the U.S. Department of Justice has stated that, when an ADA-covered entity restripes a parking lot, it must provide accessible parking spaces as required by the ADA Standards, and that failure to do so would violate Title II. Because the East Lot has been restriped since 2010, OCR determined that it is subject to the 2010 ADA Standards. Additionally, because OCR determined that the information supported that the West and South Lots have been repaved/restriped since 2000 but before 2010, they are subject to the applicable accessibility standards in effect prior to 2010 (i.e., UFAS and/or ADAAG); however, any future repaving, restriping or alterations to the West and South Lots must comply with the 2010 ADA Standards.

The Parking Lots

As noted above, OCR determined that the School has three designated parking lots: the East, West and South Lots. OCR determined that the School's parking lots have a total of 147 parking spaces; five of which are designated as accessible. The five accessible spaces are clustered in the South Lot (3 spaces) and West Lot (2 spaces), as shown in the map below.



Aerial Map of School Campus – East Lot on right; South Lot on bottom; West Lot on left – Circles indicate designated accessible entrances; dotted lines are the designated routes from the accessible parking to the accessible entrances that the District identified.

The East Lot borders the east side of the School and has 28 spaces, none of which are designated accessible spaces. The East Lot does not serve a designated accessible entrance of the School, as there is no designated accessible entrance on the east side of the School building.

The South Lot borders the front (south side) of the School. The South Lot has 39 spaces, three of which are designated accessible (Spaces 1, 2 and 3); and serves two designated accessible entrances to the School (Entrances 1 and 2). Entrance 1 is also the main entrance for the School.

The West Lot borders the west side of the School. The West Lot has 80 spaces, two of which are designated accessible (Spaces 4 and 5) and are located in the north end of the parking lot. The west side of the School has three entrances, only one of which is designated accessible (Entrance 3).

East Lot

Where more than one parking facility is provided on a site, the number of required accessible parking spaces is calculated separately for each parking facility; the number is not based on the

total number of parking spaces provided in all parking facilities provided on the site. 2010 ADA Standards 208.2; Advisory 208.2 Minimum Number. Per 2010 ADA Standards 208.2, the East Lot is required to have one accessible space.

However, the 2010 ADA Standards provide an exception that “[p]arking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.” 2010 ADA Standards 208.3.1 Advisory General Exception 2 (Exception 2).

OCR determined that because the East Lot does not serve an accessible entrance, Exception 2 applies. Accordingly, the required one accessible space can be located in a different parking facility. Specifically, OCR determined that greater accessibility can be provided by placing the accessible parking space required for the East Lot in either the South or West Lot based on the distance an individual would be required to travel from an accessible space in the East Lot to one of the School’s designated accessible entrances.

South Lot

Per UFAS 4.1.1(5)(a)/ADAAG 4.1.2(5)(a)/2010 ADA Standards 208.2, the South Lot is required to have a minimum of two accessible parking spaces. As stated above, OCR determined that the South Lot has three designated accessible parking spaces. The three designated accessible spaces (Spaces 1, 2, and 3) are located on the east end of the South Lot.

The first designated accessible space (Space 1) is located 10 parking spaces to the left of the two other accessible spaces in the South Lot (Spaces 2 and 3). Space 1 is 120” wide with a running slope of 3.1% and cross slope of 0.6%. Space 1 is marked with the International Symbol of Accessibility. Space 1 lacks an access aisle, and its ground surface is marred by cracks and potholes.



South Lot - Space 1

Accessible parking spaces must be located closest to the nearest accessible entrance on an accessible route. *See* ADAAG/UFAS 4.6.2.¹ Space 1 is located closer to Entrance 2 than to Entrance 1, but it is not the parking space closest to Entrance 2. Additionally, despite there being a crosswalk to Entrance 2 from the parking lot, there is no curb ramp from the parking lot to the sidewalk in front of Entrance 2. A curb ramp is required wherever an accessible route crosses a curb. *See* ADAAG/UFAS 4.7.1. To gain access to Entrance 2, an individual would need to traverse the designated route to Entrance 1 (traveling through the parking lot itself),² then backtrack on the sidewalk to reach Entrance 2. OCR determined that there are many parking spaces located closer to both Entrance 1 and Entrance 2 than Space 1. Therefore, OCR determined that Space 1 is not located on the shortest accessible route to an accessible entrance.



South Lot – Entrance 2 lacks curb cut - Entrance 2 is to the left of Entrance 1 when facing the School building

¹ Similarly, 2010 ADA Standards 208.3.1 requires accessible parking spaces be “located on the shortest accessible route from parking to an [accessible] entrance.”

² Advisory 502.3 for Access Aisles states, “Accessible routes must connect parking spaces to accessible entrances. In parking facilities where the accessible route must cross vehicular traffic lanes, marked crossings enhance pedestrian safety, particularly for people using wheelchairs and other mobility aids. Where possible, it is preferable that the accessible route not pass behind parked vehicles.”



South Lot – Space 1, looking east at the designated route to the designated accessible entrance and towards Spaces 2 and 3. There are 10 parking spaces between Space 1 and Space 2.

The two other designated accessible spaces in the South Lot (Spaces 2 and 3) are located next to each other and across from Entrance 1. Both spaces are marked with the International Symbol of Accessibility. Space 2 is 105” wide with a running slope of 4.0% and cross slope of 1.5%. Space 3 is 105” wide with a running slope of 2.3% and a cross slope of 1.1%. Spaces 2 and 3 share a marked access aisle that is 111” wide with a running slope of 3.2% and a cross slope of 1.1%. OCR determined that the access aisle leads to a crosswalk that connects to the designated route to Entrances 1 and 2. The crosswalk leads to a curb ramp to the sidewalk in front of Entrance 1.



South Lot – Spaces 2 and 3 and shared access aisle



South Lot – Spaces 2 and 3 and shared access aisle leading to a curb ramp



South Lot – Access aisle leading to the curb ramp and Entrance 1

During its investigation, OCR identified accessibility issues regarding the location, ground surface, access aisle, running slopes, and route for Space 1; the curb ramps for the accessible route to Entrance 2; the running slopes of Spaces 2 and 3; and the running slope of the shared access aisle in the South Lot (See Appendix).

West Lot

Per UFAS 4.1.1(5)(a)/ADAAG 4.1.2(5)(a)/2010 ADA Standards 208.2, the West Lot is required to have a minimum of four accessible spaces. As stated above, OCR determined that the West Lot has two accessible spaces (Spaces 4 and 5) located in the north end of the parking lot. Space 4 is

162” wide with a running slope of 3.2% and a cross slope of 0.4%. Space 5 is 162” wide with a running slope of 3.1% and a cross slope of 0.6%. Both spaces are marked with the International Symbol of Accessibility. There is no designated access aisle next to either Space 4 or 5, although there is open space on either side of Spaces 4 and 5.



West Lot – Spaces 4 and 5, located in north end of parking lot

There are three entrances to the School on the west side of the building, but only one designated accessible entrance (Entrance 3). Entrance 3 is the entrance located farthest from the designated accessible spaces in the West Lot. The designated route from Spaces 4 and 5 to Entrance 3 has three curb ramps, corresponding to each entrance on the side of the building. One curb ramp is directly in front of the path to the Entrance 3 while the two other curb ramps do not lead to designated accessible entrances.



West Lot – View of Spaces 4 and 5, looking towards the designated route. The entrance visible in the picture is not a designated accessible entrance.



West Lot – View of same entrance from closer vantage point; first curb ramp to sidewalk visible.

[photo deleted as it contains personal information]

West Lot - Sidewalk portion of designated route to Entrance 3 - second curb ramp visible.



West Lot – Second curb ramp on the designated route. The entrance visible is not a designated accessible entrance.

[photo deleted as it contains personal information]

West Lot – Third curb ramp on designated route and route to Entrance 3 (via left turn down path)



West Lot – looking towards Entrance 3, the designated accessible entrance on the west side of the School.

As noted above, the accessible parking spaces must be located closest to the nearest accessible entrance on an accessible route. *See* ADAAG/UFAS 4.6.2.³ OCR determined that neither Space 4 nor 5 is located on the shortest accessible route to the nearest accessible entrance. There are many parking spaces in the West Lot located closer to Entrance 3 than Spaces 4 and 5.

During its investigation, OCR identified accessibility issues regarding the number of spaces, location, running slope and access aisles in the West Lot (See Appendix).

On July 5, 2022, the District signed the enclosed resolution agreement (the Agreement) to resolve the allegation pertaining to the District’s failure to provide accessible parking spaces at the School, pursuant to Section 303(b) of OCR’s *Case Processing Manual (CPM)*.⁴ OCR will monitor the District’s implementation of the Agreement. Upon the District’s compliance with the terms of the Agreement, with Section 504 and its implementing regulations at 34 C.F.R. Part 104, and Title II and its implementing regulations at 28 C.F.R. Part 35, which were at issue in this case, OCR will close the case.

³ Similarly, the 2010 ADA Standards 208.3.1 requires accessible parking spaces be “located on the shortest accessible route from parking to an [accessible] entrance.”

⁴ *CPM* (Aug. 26, 2020) <https://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf>.

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. You 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 against the District 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, 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, please contact Lisa Khandhar, Compliance Team Attorney, at (646) 428-3778 or lisa.khandhar@ed.gov; or Jocelyn Panicali, Compliance Team Leader, at (646) 428-3796 or jocelyn.panicali@ed.gov.

Sincerely,

/s/

Rachel Pomerantz

cc: Paul H. Green, Esq. (by email)

Attachment

APPENDIX

Building Component	South Lot
Layout	Total parking spaces: 39 Designated accessible parking spaces: 3
Accessibility Issues	<ul style="list-style-type: none"> • Running Slope of Accessible Parking Space (Space 1) is 3.1%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Running Slope of Accessible Parking Space (Space 2) is 4.0%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Running Slope of Accessible Parking Space (Space 3) is 2.3%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Running Slope of the shared access aisle between Spaces 2 and 3 is 3.2%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Space 1 is not adjacent to an access aisle [2010 ADA Standards, Section 502.3 – each accessible parking space must have an access aisle adjacent to it] • Space 1 is not located on the shortest accessible route to an accessible entrance [2010 ADA Standards, Section 208.3.1 – accessible parking spaces must be “located on the shortest accessible route from parking to an [accessible] entrance”]

Building Component	West Parking Lot
Layout	Total parking spaces: 80 Designated accessible parking spaces: 2

Building Component	West Parking Lot
Accessibility Issues	<ul style="list-style-type: none"> • The West Lot does not have the required number of accessible parking spaces (3) in relation to the total number of parking spaces (80) [2010 ADA Standards, Section 208.2 - requires one accessible space for every 25 parking spaces in each parking facility.] • Running Slope of Accessible Parking Space (Space 4) is 3.2%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Running Slope of Accessible Parking Space (Space 5) is 3.1%. [2010 ADA Standards, Section 502.4 - Maximum slope allowed is 1:48 or 2.08% in all directions.] • Spaces 4 and 5 are not adjacent to marked access aisles [2010 ADA Standards, Section 502.3 and 502.3.3 – each accessible parking space must have an access aisle adjacent to it; access aisles must be marked so as to discourage parking in them] • Spaces 4 and 5 are not located on the shortest accessible route to an accessible entrance [2010 ADA Standards, Section 208.3.1 – accessible parking spaces must be “located on the shortest accessible route from parking to an [accessible] entrance”]