



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

THE WANAMAKER BUILDING, SUITE 515
100 PENN SQUARE EAST
PHILADELPHIA, PA 19107-3323

REGION III
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September 16, 2016

IN RESPONSE, PLEASE REFER TO: 03161107

Dr. Bernadette C. Reiley
Superintendent
Interboro Area School District
900 Washington Avenue
Prospect Park, Pennsylvania 19076

Dear Dr. Reiley:

This is to notify you of the resolution of the complaint that was filed with the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Interboro Area School District (the District), alleging discrimination on the basis of disability. Specifically, the complaint alleges that the District's Administration Building does not provide any designated accessible parking spaces for persons with disabilities.

OCR enforces Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104 (Section 504). Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35 (Title II). Title II prohibits discrimination on the basis of disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, the District is subject to these laws.

OCR applies a preponderance of the evidence standard to determine whether the evidence is sufficient to support a particular conclusion. Specifically, OCR examines the evidence in support of and against a particular conclusion to determine whether the greater weight of the evidence supports the conclusion or whether the evidence is insufficient to support the conclusion.

OCR considered information provided by the Complainant and the District. Additionally, OCR conducted an onsite inspection of the parking facility. Based on the information obtained by OCR during its investigation, OCR has determined that there is sufficient evidence to support a finding of a violation.

Legal Standards

The accessibility requirements of the Section 504 regulation are found at 34 C.F.R. Sections 104.21-104.23. Comparable provisions of the Title II regulation are found at 28 C.F.R. Sections 35.149-35.151. Both regulations 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, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity operated by the recipient.

Accessibility, new construction: The implementing regulations of Section 504, at 34 C.F.R. § 104.23(b), and Title II, at 28 C.F.R. § 35.151, are applicable to any facility or part of a facility where construction was commenced after June 3, 1977 (Section 504) or January 26, 1992 (Title II), respectively. These facilities are termed "new construction or alterations." The regulations provide that each facility or part of a facility which is altered by or for the use of a recipient in a manner that affects or could affect the usability of the facility shall, to the maximum extent feasible, be altered such that the altered portion is readily accessible to and usable by persons with disabilities. The regulations specify the accessibility standard to be used in determining the accessibility of the alterations based on the date of construction or renovation.

The Section 504 regulation, at 34 C.F.R. § 104.23(c), delineated the American National Standards Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped [ANSI 117.1-1961 (1971)] (ANSI) as a minimum standard for determining accessibility for facilities constructed or altered on or after June 3, 1977, and before January 18, 1991, and the Uniform Federal Accessibility Standards (UFAS) for facilities constructed or altered on or after January 18, 1991. The Title II regulation, at 28 C.F.R. § 35.151(c), delineated UFAS, or The Americans with Disabilities Accessibility Guidelines for Buildings and Facilities (ADAAG) as a minimum standard for determining accessibility for facilities constructed, or altered on or after January 26, 1992.

The regulation implementing Title II and the ADAAG standards were amended in September 2010. Title II adopted new accessibility guidelines, 2010 ADA Standards for Accessible Design (2010 ADA Standards). The regulation, at 28 C.F.R. § 35.151(c)(3), now provides, "If physical construction or alterations commence on or after March 15, 2012, then new construction and alterations subject to this section shall comply with the 2010 Standards." OCR uses the accessibility standards as a guideline for assessing the accessibility of existing facilities.

Factual Background and Analysis

The District redesigned and renovated the parking facility in 2015. Therefore, the facility must comply with the 2010 ADA Standards.

There is one parking facility with three separate sections serving the District's Administration Building, which also houses the District's Kindergarten Academy and the District's Prospect Park Elementary School. The parking facility contains a total of 128 parking spaces, five of which are designated accessible. The three sections of the parking facility are the 10th Avenue Section which has two designated accessible parking spaces, the 9th Avenue Section which has no accessible spaces, and the Prospect Park Section, which has three accessible parking spaces.

The total number of designated accessible parking spaces in this parking facility complies with the 2010 ADA Standards, which requires a minimum of five designated accessible spaces for parking facilities containing between 101 to 150 parking spaces. It is permissible under the 2010 ADA Standards to treat parking lots serving more than one building or facility as a parking facility and calculate the minimum number of designated accessible parking spaces based on the total number of parking spaces in the parking facility.

10th Avenue Section of the Parking Facility

The 10th Avenue Section of the parking facility contains a total of 25 parking spaces, two of which are designated as accessible.

Signage was identical for both of these parking spaces. There were clearly painted lines marking the boundaries for the two spaces and the Universal symbol for accessibility was painted on the macadam. For each spot, there was one upright sign with the Universal symbol for accessibility and an additional sign above it stating that it was "van accessible." These elements comply with the 2010 ADA Standards. However, the bottom of the signs were mounted at 38 inches above the ground surface; the 2010 ADA Standards require such signs to be mounted a minimum of 60 inches above the ground surface (as measured to the bottom of the sign).

While the 2010 ADA Standards require designated van accessible spaces to be a minimum of 132 inches wide, the two designated spaces measured 105 ½ inches wide and 103 ½ inches wide. The access aisle that served these spaces was 72 ½ inches wide and was clearly designated with cross-hatch markings, thus meeting the 2010 ADA Standards. The surface of both parking spaces and the shared access aisle were flat, level and free from fissures or potholes, and were thus compliant with the 2010 ADA standards. As required by the 2010 ADA Standards, the two designated accessible parking spaces in this section are the two closest accessible spaces to the designated accessible route to the building.

Prospect Elementary School Section of the Parking Facility

The Prospect Elementary School Section of this parking facility contains a total of 79 parking spaces, three of which are designated as accessible.

The signage was identical for all three parking spaces. There were clearly painted lines marking the two spaces with the Universal symbol for accessibility was painted on the macadam. For each spot, there was one upright sign with the Universal symbol for accessibility and an additional sign above it stating that it was “van accessible.” While these elements comply with the 2010 ADA Standards, the signs were mounted at 38 inches rather than the 60 inches minimum above the ground surface measured to the bottom of the sign as is required under the 2010 ADA Standards.

Each of the three parking spaces were not of sufficient width to meet the 2010 ADA Standards for van accessible spaces (132 inches minimum), measuring 91 inches wide, 97 ¼ inches wide, and 102 inches wide. The access aisle between two of the parking spaces was 61½ inches wide and was clearly designated with cross-hatch markings, thus meeting the 2010 ADA Standards. Additionally, all three parking spaces and the shared access aisles were flat, level and free from fissures or potholes, and thus compliant with the applicable 2010 ADA Standards. However, while the second shared access aisle was clearly designated with cross-hatch markings, it did not meet the 2010 ADA Standards because it was less than 60 inches wide.

The three designated accessible parking spots were the closest parking spaces to the accessible route to leading to the entrance of the District’s Administration Building/Kindergarten. Thus, the spaces were compliant with the requirement in the 2010 ADA Standards with regard to the location of accessible spaces.

OCR notes that while the five designated parking spaces at the parking facility are designated to be van accessible, the 2010 ADA Standards only require that for every six or fraction of six parking spaces required to be accessible, at least one shall be a van parking space. Accordingly, the District may opt to change the designation of some of the accessible parking spaces from van accessible.

In summary, OCR’s investigation determined that there was sufficient evidence to support a finding of a violation of Section 504 and Title II. On August 29, 2016, the District signed a Voluntary Resolution Agreement with OCR to resolve the allegation in this complaint. Accordingly, OCR is concluding its investigation of this complaint. A copy of the signed Agreement is enclosed. As is our standard practice, OCR will monitor the District’s implementation of the Agreement.

This letter is not intended, nor should it be construed, to cover any other issues regarding the District’s compliance with Section 504, Title II and their implementing regulations that may exist and are not discussed herein. The Complainant may have the right to file a private suit in federal court, whether or not OCR finds a violation.

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, we will seek to protect, to the extent provided by law, personally

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

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.

We would like to thank the District for its cooperation with OCR throughout the investigation of this complaint. If you have any questions, please contact Mr. Dale Leska at 215-656-8562 or Dale.Leska@ed.gov or me at 215-656-8522 or Vicki.Piel@ed.gov.

Sincerely,

/s/

Vicki Piel
Team Leader/Supervisory Attorney
Philadelphia Office

Enclosure

CC: Katherine H. Meehan, Esquire (all via email with encl.)