



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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October 28, 2016

IN RESPONSE, PLEASE REFER TO DOCKET #03161232

Dr. Elizabeth Robison
Superintendent
Pocono Mountain Area School District
PO Box 200
Swiftwater, Pennsylvania 18370

Dear Dr. Robison,

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint that was filed against the Pocono Mountain Area School District (the District), alleging that the District discriminates on the basis of disability. Specifically, the complaint alleged that during the 2015-2016 school year, the District discriminated with respect to the provision of accessible parking to persons with disabilities at the Swiftwater Intermediate School (SIS) and the East Junior High School by:

- 1) Allowing persons who are not disabled to park in the designated accessible parking spaces;
- 2) Not properly identifying its designated accessible parking spaces with signage or clearly marked lines; and
- 3) Not providing spaces which are located closest to the entrances of these buildings.

OCR enforces Section 504 of the Rehabilitation Act of 1973, and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as 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.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

OCR considered information provided by the Complainant and the District, and conducted interviews of the Complainant and District personnel. Additionally, OCR conducted an onsite inspection of these parking lots on August 24, 2016. Based on the information obtained by OCR during its investigation, OCR has determined the following: Allegation 1 has been resolved by the District, there is sufficient evidence to support the finding of a violation with regard to Allegation 2, and there is insufficient evidence to support a violation under Allegation 3. The basis for OCR's decision is explained below.

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. Parking facilities must be accessible to persons with disabilities so that they can access a recipient's programs and activities.

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.

Allegation 1

Factual Background

The Complainant asserted that persons who were not disabled were allowed to park in the designated accessible parking spaces at the District's SIS and East Junior High School.

The District acknowledged to OCR that there were a few instances during the 2015-2016 school year when unauthorized persons parked in the designated accessible parking spaces in the parking lots at these schools. The information obtained by OCR regarding these incidents established that these individuals were identified and required to move their vehicles.

As of the 2016-2017 school year, the District reported that it adopted an official parking policy to address these violations, and that it is currently addressing them through the enforcement of this policy. The District provided OCR with a copy of this policy, along with documentation establishing that relevant District personnel were advised of the policy and were directed to enforce it. This policy prevents persons from parking in designated accessible parking spaces at District schools and facilities without having the required identification to show that they are authorized to do so; it further provides that individuals who do so without proper authorization are to be issued a violation notice, directed to relocate their vehicles, and warned that future violations could result in their parking privileges at the District being rescinded and/or issuance of a citation by local law enforcement authorities. The District also submitted documentation regarding one instance during the current school year when a violation was issued pursuant to the policy.

The Complainant advised OCR that she is not aware of any instances during the 2016-2017 school year when nondisabled persons have parked in designated accessible parking spaces at the District's schools and facilities.

Analysis

OCR will administratively close an allegation where OCR obtains credible information at any time indicating that the allegation raised by the complaint is resolved, and there are

no class-wide allegations. In such a case, OCR will attempt to ascertain the apparent resolution. If OCR determines that there are no current allegations appropriate for further complaint resolution, the complaint will be closed.

The District acknowledged to OCR that there were a few occasions during the 2015-2016 school year where persons who were not disabled parked in the designated accessible parking spaces at these schools; however, when this occurred, District personnel required these individuals to move their vehicles. Additionally, while OCR's investigation of this complaint was in process, the District developed and implemented a formal parking policy to further address the improper use of designated accessible parking spaces. Pursuant to this policy, unauthorized persons who park in designated accessible parking spaces are issued a form titled, "Notice of Parking Violation," and warned that continued parking violations of this nature may result in the loss of their parking privileges and/or the issuance of a formal citation by local law enforcement. The District also provided OCR with documentation showing that the parking policy was being actively enforced.

Therefore, OCR's investigation established that the District resolved this allegation during the course of the complaint investigation through the development, adoption, and enforcement of a parking policy. Accordingly, we are administratively closing this allegation.

Allegations 2 and 3

Factual Background and Analysis

The Complainant alleged that the designated accessible parking spaces at these schools are not properly identified with signage or clearly marked lines. The Complainant also alleged that the designated accessible parking spaces in the parking lots serving these schools are not the parking spaces which are located closest to the designated accessible entrances at these buildings.

The District renovated these parking facilities in 2016. Therefore, they must comply with the 2010 ADA standards.

OCR conducted an onsite inspection of the parking lots that are the subject of this complaint. There are a total of four parking lots which serve these schools. All of these lots were paved and repainted in July and August 2016 and the painted lines on the macadam of the designated accessible parking spaces were clearly visible. Only one of the designated accessible parking spaces in any of these parking lots had a vertical sign identifying it as an accessible parking space and which displayed the universal symbol for accessibility. While this element at this parking space complies with the 2010 ADA Standards, this sign was mounted at 45.5 inches high 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. Additionally, the failure to provide signage at any of the other designated accessible parking spaces in these parking lots does not comply with the 2010 ADA Standards, which requires these spaces to be identified with signage which includes the international symbol for accessibility and specifies that the parking space is van accessible, as applicable.

All of the designated accessible parking spaces in these lots were the closest spaces to the schools' designated accessible entrances in accordance with the 2010 ADA Standards. Thus, the spaces were compliant with the requirement in the 2010 ADA Standards with regard to the location of accessible spaces.

In summary, OCR's investigation determined that there was sufficient evidence to support a finding of a violation of Section 504 and Title II with respect to the signage for the designated accessible parking spaces in the parking lots serving these schools (Allegation 2). However, there was insufficient evidence to support a violation of Section 504 and Title II with respect to the location of the designated accessible parking spaces in these parking lots (Allegation 3).

On October 20, 2016, the District signed a Voluntary Resolution Agreement with OCR to resolve Allegation 2 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 concludes OCR's investigation of the complaint and 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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.

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, 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.

If you have any questions or concerns, please contact me at 215-656-8522 or by email at vicki.piel@ed.gov or Dale Leska at dale.leska@ed.gov or 215-656-8562.

Sincerely,

/s/

Vicki Piel
Team Leader

Enclosure
cc: XXXXXX