



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

61 Forsyth St., Suite 19T10
ATLANTA, GA 30303

REGION IV
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May 13, 2016

Dr. James E. McElroy
Superintendent
Lee County School District
2410 Society Hill Road
Opelika, Alabama 36804-4830

Re: OCR Complaint# 04-16-1095

Dear Dr. McElroy:

On November 16, 2015, the U.S. Department of Education (Department), Office for Civil Rights (OCR), received a complaint filed on your behalf against the Lee County School District (District) alleging discrimination on the basis of disability.

Specifically, the Complainants allege that the District is discriminating against persons with disabilities by not providing accessible parking spaces on a regular basis. They alleged that staff at Beulah High School (School) on three separate occasions requested that they move their vehicle from the School's identified accessible parking spaces to allow School buses to pick up or drop off students at the School. As a result they were forced to park in less accessible parking spaces in the School's parking lot.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, 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 is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35, which prohibit 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 Section 504 and Title II.

OCR initiated an investigation of the of the issue of whether the District is discriminating against persons with disabilities by not providing accessible parking spaces at the School in noncompliance with Section 504 and its implementing regulation at 34 C.F.R. §§ 104.21-23 and Title II and its implementing regulation 28 C.F.R. §§ 35.149-151.

Applicable Legal Standards

The Section 504 implementing regulation states 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 to which Section 504 applies. 34 C.F.R. § 104.21. The Title II regulation contains a similar provision for public entities at 28 C.F.R. § 35.149.

The Section 504 and Title II regulations contain standards for determining whether a school's programs, activities, and services are accessible to individuals with disabilities, depending upon whether the facilities are determined to be existing, new construction, or alterations. The applicable standard depends upon the date of construction or alteration of the facility.

For existing facilities, the regulations require an educational institution to operate each service, program, or activity so that, when viewed in its entirety, it is readily accessible to and usable by individuals with disabilities. This standard does not necessarily require that the institution make each of its existing facilities or every part of a facility accessible if alternative methods are effective in providing overall access to the service, program, or activity. 34 C.F.R. §104.22(a); 28 C.F.R. § 35.150(a). Under the Section 504 regulation, existing facilities are those for which construction began before June 3, 1977. The applicable date under the Title II regulation is January 26, 1992. In choosing among available methods for meeting the program access requirement for existing facilities, the institution is required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b). The Section 504 regulation also requires a recipient to adopt and implement procedures to ensure that interested persons can obtain information as to the existence and location of services, activities, and facilities in existing construction that are accessible to and usable by persons with disabilities. 34 C.F.R. § 104.22(f).

For an entity covered by Section 504, new construction and alterations after June 3, 1977, but prior to January 18, 1991, must conform to the American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped (ANSI). New construction and alterations between January 18, 1991, and January 26, 1992, must conform to the Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Standards for Accessible Design (ADA Standards) or equivalent standards. In reviewing program access for an existing facility, the ADA Standards or UFAS may also be used as a guide to understanding whether individuals with disabilities can participate in the program, activity, or service.

Regarding the standards for parking spaces, Section (5) (a) states that if parking spaces are provided for employees or visitors, or both, then accessible spaces, complying with 4.6, shall be provided in each such parking area in conformance with the following table:

Total Parking in Lot Required Minimum Number of Accessible Spaces

1 to 25	1
26 to 50	2
51 to 75	3

Total Parking in Lot Required Minimum Number of Accessible Spaces

76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	*
1001 and over	**

* 2 percent of total.

** 20 plus 1 for each 100 over 1000.

Also, according to section 4.6.2 the location of UFAS, parking spaces for disabled people and accessible passenger loading zones that serve a particular building shall be the spaces or zones located closest to the nearest accessible entrance on an accessible route. In separate parking structures or lots that do not serve a particular building, parking spaces for disabled people shall be located on the shortest possible circulation route to an accessible pedestrian entrance of the parking facility. Regarding the size of parking spaces, section 4.6.3 of UFAS provides that Parking spaces for disabled people shall be at least 96 in (2440 mm) wide and shall have an adjacent access aisle 60 in (1525 mm) wide minimum (see Fig. 9). Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible circulation route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 in all directions. Finally, regarding signage, section 4.6.4 of UFAS states that accessible parking spaces shall be designated as reserved for the disabled by a sign showing the symbol of accessibility (see 4.30.5). Such signs shall not be obscured by a vehicle parked in the space.

In communication with OCR, District representatives stated that they planned to make the parking spaces “ ADA-compliant.” OCR therefore applied the UFAS and ADA Standards in analyzing the information obtained to date and drafting the resolution agreement and will apply 2010 ADA Standards throughout the monitoring process.

Summary of Investigation

Upon notification of this complaint, the District requested to voluntarily resolve this complaint under Section 302 of OCR’ s *Case Processing Manual*. Pursuant to these procedures, a complaint may be resolved at any time when, before the conclusion of an OCR investigation, the recipient expresses an interest in resolving the complaint and signs a resolution agreement that addresses the complaint allegations. In such circumstances, the provisions of the resolution

agreement will be aligned with the complaint allegations or the information obtained during the investigation and will be consistent with applicable regulations.

The District provided OCR with pictures of the area in front of the School, whereby the Complainant complained that the accessible parking spaces were being blocked by school buses in the morning or afternoon when students were being picked up from School and dropped off to School. The District also provided pictures of all of the accessible parking spaces around the School. Based on the pictures and a discussion with the District, it appears that the accessible parking spaces in front of the school are temporarily blocked because of the school bus route. Additionally, there are other parking spaces which may require new signage and access aisles.

Resolution Agreement

On May 10, 2016, the District signed the attached Resolution Agreement (Agreement), which once implemented, will fully address the complaint allegation in accordance with the requirements of Section 504 and Title II. The Agreement requires the District to immediately change the bus routes to prevent blocking the accessible parking spaces identified at the front of the School. Also, the District will immediately have an ADA Consultant review each of the 12 parking spaces at the School to determine if the parking spaces are compliant regarding number, size, appropriate access routes, and signage. During the summer of 2016, the District shall begin the process of implementing the recommendations of an ADA Consultant. Before the start of the 2016-2017 school year, the School shall make sure that all proper signage and access routes are put in place. The District shall make sure that all parking spaces which are inaccessible due to location on an incline or lack accessibility to the School's buildings are removed.

OCR will monitor the District's implementation of the attached Agreement to ensure that it is fully implemented and that the District is in compliance with the statutes and regulations at issue in this complaint.

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.

Thank you for your cooperation during the resolution of this complaint. . If you have any questions concerning this letter, please contact April England-Albright, General Attorney, at (404) 974-9408, or by email, at A.England-Albright@ed.gov, or me, at (404) 974-9374.

Sincerely,

George A. Brown, Esq.,
Acting Compliance Team Leader

Enclosure