



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

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ATLANTA, GA 30303-8927

REGION IV

ALABAMA
FLORIDA
GEORGIA
TENNESSEE

July 14, 2022

Via electronic mail only to: XXXXXXXX

XXXXXX
Superintendent
Hartselle City Schools
XXXXXX
XXXXXX, Alabama XXXXXXXX

**Re: Complaint # 04-17-1481
Letter of Resolution**

Dear XXXXXXX,

This letter is to advise you of the outcome of the U.S. Department of Education, Office for Civil Rights (OCR) investigation of the complaint received against Hartselle City Schools (District). The complaint alleged that there were no designated, accessible parking spaces for persons with disabilities at the front of Hartselle Junior High School (School), and that the two to three designated, accessible parking spaces for persons with disabilities at the back of the School were located in an area that is locked and inaccessible. The complaint also alleged that there is no ramp at the front entrance of the School that allows access for individuals who use wheelchair or have other mobility issues.

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 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 prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department of Education and a public entity, the District is subject to these laws and to OCR's jurisdiction.

OCR investigated the legal issues of whether: 1) the parking spaces at the front and the back of the School; and 2) the front entrance to the School, are inaccessible to or unusable by individuals with mobility impairments, in violation of Section 504 and its implementing regulations at 34 C.F.R. §§ 104.21-104.23, and Title II and its implementing regulation at 28 C.F.R. §§ 35.149-35.151.

During its investigation, OCR interviewed the Complainant, the XXXXXXX, and the XXXXXXX. OCR also reviewed photographs and maps of School property and conducted a virtual on-site investigation of the School with District officials on February 4, 2022.

Prior to OCR completing its investigation, the District expressed a willingness to resolve the complaint pursuant to Section 302 of OCR's *Case Processing Manual*. Allegations under investigation may be resolved at any time when, prior to the completion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. The provisions of the resolution agreement must be tied to the allegations, and the evidence obtained during the investigation will be consistent with applicable regulations. Following are the relevant legal standards and OCR's summary of the investigation, to date.

Legal Standards

The regulations implementing Section 504 and Title II, at 34 C.F.R. § 104.21 and 28 C.F.R. § 35.149, respectively, state that no qualified individual with a disability shall be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination by a recipient because the recipient's facilities are inaccessible to or unusable by persons with disabilities. The Section 504 and Title II regulations contain different standards, based on when a facility was constructed or altered, for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities.

The accessibility requirements of Section 504 are found at 34 C.F.R. §§ 104.21-104.23. Comparable sections of the Title II regulations are found at 28 C.F.R §§ 35.149-35.151. Both regulations provide generally that no qualified individual with a disability shall, because facilities are inaccessible to or unusable by individuals with disabilities, be excluded from participation in, or denied the benefits of services, programs, or activities, or be subjected to discrimination.

The School meets the definition of a "facility" under the Section 504 and Title II regulations (see 34 C.F.R. § 104.3(i) and 28 C.F.R. § 35.104.) The School is comprised of the building, the parking lots, the route from the parking lots to the buildings, and the sidewalks.

Accessibility of Existing Facilities

The standards of program access that apply to an existing facility are found at 34 C.F.R. § 104.22 and 28 C.F.R. § 35.150. Both Section 504 and Title II require that the District shall operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.22 (a); 28 C.F.R. § 35.150 (a). This standard does not necessarily require that the District 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. See 34 C.F.R. § 104.22(a); 28 C.F.R. § 35.150(a). In choosing among available methods for meeting the program access requirements for existing facilities, the District required to give priority to those methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 34 C.F.R. § 104.22(b); 28 C.F.R. § 35.150(b).

However, when all or part of an existing facility is altered in a manner that affects or could affect the usability of the facility or part of the facility, it shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities. See 34 C.F.R. § 104.23(b); 28 C.F.R. § 35.151(b).

Accessibility of New Construction

The implementing regulations of Section 504, at 34 CFR § 104.23, and Title II, at 28 CFR § 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 considered “new construction or alterations.” The Section 504 and Title II 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 individuals with disabilities. The Section 504 and Title II regulations set forth the specific accessibility standards to be used in new construction. See 34 § 104.23(c); 28 C.F.R. § 35.151(c).

The Section 504 regulation, 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 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), delineates UFAS or the *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities* (ADA Standards for Accessible Design) 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 ADA Standards for Accessible Design was amended in September 2010. Title II adopted new accessibility guidelines, the *2010 ADA Standards for Accessible Design* (2010 ADA Standards)¹, which became effective March 15, 2011. Title II, 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 [ADA] Standards.” For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, however, the Title II regulation provides that recipient had a choice of complying with UFAS, the ADA Standards for Accessible Design, or the 2010 ADA Standards.

The main building of the School and the parking lots were constructed in 1962. Additions to the building for the library and cafeteria were constructed in 1987. Automatic lifts were installed in the building in 2015 to assist with accessibility issues. Sometime after the complaint was filed on May 24, 2017, additional parking spaces were added, and the School now has a total of 277 parking spaces, including 8 designated parking spaces for persons with disabilities, including 2 in the front of the school, 4 at the back of the gym, and 2 at the resource center. During the summer of 2020, improvements were made to the parking lot, including re-stripping the parking spaces and updating

¹ <https://www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm>

and adding signage around the spaces to make them more noticeable. In February 2022, the District also retained a consulting company in an effort to ensure that the designated accessible parking spaces complied with the appropriate accessibility standards. Based on the recent dates of these improvements, OCR analyzed whether the District provides designated accessible parking spaces and designated accessible routes into the School that comply with the 2010 ADA Standards. The following sections of the 2010 ADA Standards were used to determine compliance at the School:

Approach and Entrance

206.1 General. Accessible routes shall be provided in accordance with 206 and shall comply with Chapter 4.

206.2 Where Required. Accessible routes shall be provided where required by 206.2.

206.2.1 Site Arrival Points. At least one accessible route shall be provided within the site from accessible parking spaces and accessible passenger loading zones; public streets and sidewalks; and public transportation stops to the accessible building or facility entrance they serve.

Parking

208.2 Minimum Number. Parking spaces complying with 502 shall be provided in accordance with Table 208.2 except as required by 208.2.1, 208.2.2, and 208.2.3. Where more than one parking facility is provided on a site, the number of accessible spaces provided on the site shall be calculated according to the number of spaces required for each parking facility.

Table 208.2 Parking Spaces	
Total Number of Parking Spaces Provided in Parking Facility	Minimum Number of Required Accessible Parking Spaces
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4

101 to 150	5
151 to 200	6
201 to 300	7

208.2.4 Van Parking Spaces. For every six or fraction of six parking spaces required by 208.2 to comply with 502, at least one shall be a van parking space complying with 502.

208.3 Location. Parking facilities shall comply with 208.3.

208.3.1 General. Parking spaces complying with 502 that serve a particular building or facility shall be located on the shortest accessible route from parking to an entrance complying with 206.4. Where parking serves more than one accessible entrance, parking spaces complying with 502 shall be dispersed and located on the shortest accessible route to the accessible entrances. In parking facilities that do not serve a particular building or facility, parking spaces complying with 502 shall be located on the shortest accessible route to an accessible pedestrian entrance of the parking facility.

502.1 General. Car and van parking spaces shall comply with 502. Where parking spaces are marked with lines, width measurements of parking spaces and access aisles shall be made from the centerline of the markings.

EXCEPTION: Where parking spaces or access aisles are not adjacent to another parking space or access aisle, measurements shall be permitted to include the full width of the line defining the parking space or access aisle.

502.2 Vehicle Spaces. Car parking spaces shall be 96 inches (2440 mm) wide minimum and van parking spaces shall be 132 inches (3350 mm) wide minimum, shall be marked to define the width, and shall have an adjacent access aisle complying with 502.3.

EXCEPTION: Van parking spaces shall be permitted to be 96 inches (2440 mm) wide minimum where the access aisle is 96 inches (2440 mm) wide minimum.

502.3 Access Aisle. Access aisles serving parking spaces shall comply with 502.3. Access aisles shall adjoin an accessible route. Two parking spaces shall be permitted to share a common access aisle.

502.3.1 Width. Access aisles serving car and van parking spaces shall be 60 inches (1525 mm) wide minimum.

502.3.2 Length. Access aisles shall extend the full length of the parking spaces they serve.

502.3.3 Marking. Access aisles shall be marked so as to discourage parking in them.

502.3.4 Location. Access aisles shall not overlap the vehicular way. Access aisles shall be permitted to be placed on either side of the parking space except for angled van parking spaces which shall have access aisles located on the passenger side of the parking spaces.

502.4 Floor or Ground Surfaces. Parking spaces and access aisles serving them shall comply with 302. Access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted.

EXCEPTION: Slopes not steeper than 1:48 shall be permitted.

502.5 Vertical Clearance. Parking spaces for vans and access aisles and vehicular routes serving them shall provide a vertical clearance of 98 inches (2490 mm) minimum.

502.6 Identification. Parking space identification signs shall include the International Symbol of Accessibility complying with 703.7.2.1. Signs identifying van parking spaces shall contain the designation "van accessible." Signs shall be 60 inches (1525 mm) minimum above the finish floor or ground surface measured to the bottom of the sign.

502.7 Relationship to Accessible Routes. Parking spaces and access aisles shall be designed so that cars and vans, when parked, cannot obstruct the required clear width of adjacent accessible routes.

Accessible Route

402.1 General. Accessible routes shall comply with 402.

402.2 Components. Accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. All components of an accessible route shall comply with the applicable requirements of Chapter 4.

403 Walking Surfaces

403.1 General. Walking surfaces that are a part of an accessible route shall comply with 403.

403.2 Floor or Ground Surface. Floor or ground surfaces shall comply with 302.

403.3 Slope. The running slope of walking surfaces shall not be steeper than 1:20. The cross slope of walking surfaces shall not be steeper than 1:48.

403.4 Changes in Level. Changes in level shall comply with 303.

404 Doors, Doorways, and Gates

404.1 General. Doors, doorways, and gates that are part of an accessible route shall comply with 404.

EXCEPTION: Doors, doorways, and gates designed to be operated only by security personnel shall not be required to comply with 404.2.7, 404.2.8, 404.2.9, 404.3.2 and 404.3.4 through 404.3.7.

Advisory 404.1 General Exception. Security personnel must have sole control of doors that are eligible for the Exception at 404.1. It would not be acceptable for security personnel to operate the doors for people with disabilities while allowing others to have independent access.

404.2 Manual Doors, Doorways, and Manual Gates. Manual doors and doorways and manual gates intended for user passage shall comply with 404.2.

404.2.1 Revolving Doors, Gates, and Turnstiles. Revolving doors, revolving gates, and turnstiles shall not be part of an accessible route.

404.2.2 Double-Leaf Doors and Gates. At least one of the active leaves of doorways with two leaves shall comply with 404.2.3 and 404.2.4.

404.2.3 Clear Width. Door openings shall provide a clear width of 32 inches (815 mm) minimum. Clear openings of doorways with swinging doors shall be measured between the face of the door and the stop, with the door open 90 degrees. Openings more than 24 inches (610 mm) deep shall provide a clear opening of 36 inches (915 mm) minimum. There shall be no projections into the required clear opening width lower than 34 inches (865 mm) above the finish floor or ground. Projections into the clear opening width between 34 inches (865 mm) and 80 inches (2030 mm) above the finish floor or ground shall not exceed 4 inches (100 mm).

Summary of Investigation

Designated Accessible Parking

The School has a total of 277 parking spaces, including 8 designated accessible parking spaces. Four of the parking spaces are located outside Pettey Center Gym, two are located outside Riley Resource Center, and two are located on the north side of the School. The 2010 ADA Standards at § 208.2 require a total of seven accessible spaces for parking spaces, including one van accessible parking space which shall comply with § 502. See § 208.2.4. Accordingly, based on the information that the District provided for OCR's review during its investigation, to date, there appears to be a sufficient number of designated accessible spaces at the School. There are no parking spaces for persons with disabilities that are locked or inaccessible, as alleged in the complaint. The designated parking spaces also contain identification signs, as required by the 2010 ADA Standards at § 502.6. These parking spaces also have access aisles adjoining accessible routes that are marked to discourage parking in them, as required by the 2010 ADA Standards at § 502.3 and 502.3.3.

However, the two designated accessible parking spaces on the north side of the School are located on the vehicular route. Pursuant to 2010 ADA Standards at § 502.3.4, access aisles shall not overlap the vehicular way. The District has agreed to enter into the attached Resolution Agreement which, when fully implemented, will ensure that the District complies, in full, with the 2010 ADA Standards.

Accessible Route

The eight parking spaces for persons with disabilities in the School parking lot are all located on the shortest accessible routes from the parking lot to the entrances, in compliance with the 2010 ADA Standards at §§ 206.4 and 208.3.1. The District installed a wheelchair lift at the front access of the School. Individuals who use wheelchairs may use the alternate entrance at the School that has an exterior ramp and an interior wheelchair lift. OCR viewed the chair lift during its virtual on-site inspection with the District on February 4, 2022. Pursuant to the 2010 ADA Standards at § 402.2, accessible routes shall consist of one or more of the following components: walking surfaces with a running slope not steeper than 1:20, doorways, ramps, curb ramps excluding the flared sides, elevators, and platform lifts. Based on the walking surfaces from the designated parking spaces to the designated accessible entrances, the School provides designated accessible routes that meet the minimum requirements of §§ 206.4 and 208.3.1.

Analysis

Prior to the completion of the investigation, the District expressed an interest in resolving the complaint with a resolution agreement pursuant to Section 302 of the *Case Processing Manual*. Based on the investigation to date, OCR notes some preliminary concerns that warrant entering into a resolution agreement. Specifically, the two designated accessible parking spaces on the north side of the School are located on the vehicular route.

The attached Resolution Agreement (Agreement) will, when fully implemented, resolve the issues identified above. The Agreement requires the District to consult with persons knowledgeable about the accessibility requirements of Section 504, Title II and the 2010 ADA Standards. The District will ensure that the designated accessible parking at the School, including designated accessible routes, comply with §§ 208 and 502 of the 2010 ADA Standards.

OCR will monitor the District's implementation of this Agreement to ensure that it is fully implemented. If the District fails to implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance with Section 504 and Title II.

Conclusion

This concludes OCR's investigation of the complaint. 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. Complainants 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 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 regarding this matter, please contact Laura Mitchell at (404) 974-9456, or me, at (404) 974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader

Enclosure