



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

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ATLANTA, GA 30303-8927

REGION IV
ALABAMA
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April 24, 2019

Jeffery R. Edison
Superintendent
Levy County School District
480 Marshburn Drive
Bronson, Florida 32621

Re: Complaint #04-19-1071

Dear Superintendent Edison:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint filed on November 7, 2018, against Levy County School District (the District). The Complainant alleged that the District discriminates against individuals with mobility impairments at Chiefland Elementary School (the School) by failing to provide unobstructed access to designated accessible parking spaces for several hours a day, i.e. during drop-off and pick-up hours.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 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; and Title II of the Americans with Disabilities Act of 1990 (Title II), 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, the District is subject to the provisions of Section 504. As a public entity, the District is also subject to the provisions of Title II. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

OCR opened an investigation of the following legal issue:

Whether the District failed to provide unobstructed access to designated accessible parking spaces at the School, in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-23, and the Title II implementing regulation at 28 C.F.R. §§ 35.149-151 and § 35.133.

During its investigation, OCR reviewed and analyzed relevant documents provided by the Complainant and the District, including a map of the parking lot. OCR also conducted interviews with the Complainant.

After submission of the documentation above, but before OCR completed review of the documentation or conducted interviews; on February 8, 2019, the District requested to resolve this complaint pursuant § 302 of OCR's *Case Processing Manual*. Section 302 states that allegations under investigation may be resolved at any time when, prior to the point when the Regional Office issues a final determination, the recipient expresses an interest in resolving the allegations and OCR determines that is appropriate to resolve them because OCR's investigation has identified issues that can be addressed through a resolution agreement. OCR has determined that it is appropriate to resolve the complaint allegation with a § 302 resolution agreement because OCR's investigation has identified issues that can be addressed through a resolution agreement.

On April 22, 2019, the District submitted the enclosed signed Resolution Agreement, which, when fully implemented, will address the issue under investigation.

Legal Standards

The regulations implementing Section 504, at 34 C.F.R. §104.21, and Title II, at 28 C.F.R. §35.149, state that no 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 and Title II apply.

The Section 504 and Title II regulations contain two standards for determining whether a District's programs, activities, and services are accessible to individuals with disabilities. One standard applies to existing facilities; the other covers new construction and 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).

For new construction, the facility (or newly constructed part of the facility) must itself be readily accessible to and usable by persons with disabilities. 34 C.F.R. §104.23(a); 28 C.F.R. §35.151(a). With regard to alterations, each facility or part of a facility that is altered by, on behalf of, or for the use of an institution after the effective dates of the Section 504 and/or Title II regulation in a manner that affects or could affect the usability of the facility or part of the facility must, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by persons with disabilities. 34 C.F.R. §104.23(b); 28 C.F.R. §35.151(b).

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 Uniform Federal Accessibility Standards (UFAS). New construction and alterations after January 26, 1992, must conform to UFAS or the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or equivalent standards. 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), which became effective March 15, 2012. 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.”

Investigation to Date

The main building of the School was constructed in 1991 and a new wing (10,000 sq. ft.) was added in 2008. There are a total of eight designated accessible parking spaces at the School out of a total of 120 (four to the right of the entrance and four in other areas not affected by pick-up/drop-off lines).

The Complainant alleged that she is often unable to park without waiting 40 minutes because the pick-up and drop-off lines block four of the designated accessible parking spaces on a daily basis. She stated that parents get to the School early and park in a line right in front of/blocking the accessible parking spaces, so it is not possible to enter or exit those spaces. She also asserts that the four remaining parking spaces get taken up quickly.

The District asserts that 1) there are four accessible parking spaces that are not affected by the line, 2) the Complainant and any mobility impaired guardian or parent could drive through the line as well to drop-off or pick-up their student(s), rather than park, and 3) the entire process for drop-off and pick-up of students in the morning and afternoon is completed in about 20 minutes as students are brought directly to the awaiting vehicles, thus, any blockage of the four spaces to the right of the School entrance would only occur for a maximum of 20 minutes at a time and only if parent/guardian drivers are not willing to allow a vehicle to enter or exit the space.

The evidence gathered, thus far, in OCR’s investigation raises a concern with regard to the availability and/or unobstructed access to the designated accessible parking spaces during certain hours at the School.

In order to resolve the noted compliance concerns regarding the unobstructed access to the designated accessible parking spaces, the District agreed to take corrective actions outlined in the enclosed Resolution Agreement (Agreement). The corrective actions include: 1) signage prohibiting blocking the area in front of the designated accessible parking spaces; and 2) a designee to monitor compliance with the signage during pick-up and drop-off times.

OCR will monitor the implementation of the Agreement to ensure that it is fully implemented. If the District fails to fully implement the Agreement, OCR will reopen the case and take appropriate action to ensure compliance.

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.

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. The Complainant may have a right to file a private suit in federal court whether or not OCR finds a violation.

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. If OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of privacy.

Thank you and your staff for the cooperation shown to OCR. OCR looks forward to the District's first monitoring report by **May 1, 2019**. If you have any questions or concerns about this letter or seek further information, please contact General Attorney Edget Betru at 404-974-9351 or by email at Edget.Betru@ed.gov, or the undersigned at (404) 974-9356.

Sincerely,

Wendy Gatlin
Compliance Team Leader