



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

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV

ALABAMA
FLORIDA
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June 18, 2020

Via Email (lparkison@mcmminnschools.com)

Mr. Lee Parkison
Director of Schools
McMinn County Schools
3 South Hill Street
Athens, TN 37303

Re: Complaint #04-20-1277

Dear Mr. Parkison:

The U.S. Department of Education (Department), Office for Civil Rights (OCR), has completed its case resolution process for the above-referenced complaint filed on February 6, 2020, against the McMinn County School District (District). The Complainant alleged that the two parking lots (Lots 1 and 2) serving the pre-kindergarten entrance at Niota Elementary School (School) are not accessible to individuals with mobility disabilities. Specifically, the Complainant alleged that Lot 1 has no accessible spaces and no accessible route leading to the School's pre-kindergarten entrance and that the School bars access to Lot 2's accessible space during the School's designated pick-up and drop-off times for pre-kindergarten students.

OCR investigated this complaint under Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended, 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), as amended, 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. The District receives Federal financial assistance from the Department and is a public entity. Accordingly, the District is subject to the above-referenced statutes.

OCR investigated the following legal issue:

Whether the School parking lots designated for pre-school pick up and drop off are inaccessible to or unusable by individuals with mobility disabilities in noncompliance with the Section 504 implementing regulation at 34 C.F.R. §§ 104.21-104.23, and the Title II implementing regulation at 28 C.F.R. §§ 35.149-35.151.

During its investigation to date, OCR analyzed documents pertinent to the complaint allegations which the Complainant and the District submitted, including photographs of the School's parking

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lots. A finding that a recipient has violated one of the laws that OCR enforces must be supported by a preponderance of the evidence (i.e., sufficient evidence to prove that it is more likely than not that unlawful discrimination occurred). Prior to the conclusion of OCR's investigation, the District requested to resolve this complaint with the attached voluntary resolution agreement (Agreement) pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), and OCR agreed. Provided below is a discussion of OCR's investigation to date.

Legal Standards

The Section 504 regulation, at 34 C.F.R. § 104.21, and the Title II regulation, at 28 C.F.R. § 35.149, provide that no qualified individual with a disability shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in a school district's programs or activities because the recipient's facilities are inaccessible to or unusable by individuals with disabilities.

The regulations implementing Section 504 and Title II each contain two standards for determining whether a recipient's programs, activities, and services are accessible to individuals with disabilities. One standard applies to facilities existing at the time of the publication of the regulations and the other standard applies to facilities constructed or altered after the publication dates. The applicable standard depends on the date of construction and/or alteration of the facility. Under the Section 504 regulation, existing facilities are those for which construction began prior to June 4, 1977; under the Title II regulation, existing facilities are those for which construction began prior to January 27, 1992. Facilities constructed or altered on or after these dates are considered newly constructed or altered facilities under Section 504 and Title II standards.

For existing facilities, the Section 504 regulation, at 34 C.F.R. § 104.22, and the Title II regulation, at 28 C.F.R. § 35.150, require a recipient 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. The recipient may comply with this requirement through the reassignment of programs, activities, and services to accessible buildings, alteration of existing facilities, or any other methods that result in making each of its programs, activities and services accessible to persons with disabilities. In choosing among available methods of meeting the requirements, a recipient must give priority to methods that offer programs, activities, and services to persons with disabilities in the most integrated setting appropriate.

With respect to newly constructed facilities, the Section 504 regulation, at 34 C.F.R. § 104.23(a), and the Title II regulation, at 28 C.F.R. § 35.151(a), require that the recipient design and construct the facility, or part of the facility, in such a manner that it is readily accessible to and usable by individuals with disabilities. In addition, for new alterations that affect or could affect facility usability, the Section 504 regulation, at 34 C.F.R. § 104.23(b), and the Title II regulation, at 28 C.F.R. § 35.151(b), require that, to the maximum extent feasible, the recipient alter the facility in such a manner that each altered portion is readily accessible to and usable by individuals with disabilities.

The new construction provisions of the Section 504 and Title II regulations also set forth specific architectural accessibility standards for facilities constructed or altered after particular dates. With respect to Section 504 requirements, facilities constructed or altered after June 3, 1977, but prior to January 18, 1991, must comply with the American National Standards Institute (ANSI) Standards (A117.1-1961, re-issued 1971). Facilities constructed or altered after January 17, 1991, must meet the requirements of the Uniform Federal Accessibility Standards (UFAS). Under the Title II

regulation, a recipient had a choice of adopting either UFAS or the 1991 Americans with Disabilities Act Accessibility Guidelines (ADA Accessibility Standards) for facilities constructed or altered after January 26, 1992 and prior to September 15, 2010. For facilities where construction or alterations commenced on or after September 15, 2010, and before March 15, 2012, the Title II regulation provides that recipient had a choice of complying with either UFAS, the ADA Accessibility Standards, or the 2010 ADA Standards for Accessible Design (2010 ADA Standards). The Title II regulation provides that recipients are required to comply with the 2010 ADA Standards for construction or alterations commencing on or after March 15, 2012. While the Section 504 regulations have not been amended to formally adopt the 2010 ADA Standards, a recipient may use the 2010 ADA Standards as an alternative accessibility standard for new construction and alterations pursuant to Section 504. The 2010 ADA Standards consist of 28 C.F.R. § 35.151 and the 2004 ADAAG, at 36 C.F.R. Part 1191, appendices B and D.

2010 ADA Standards

208: Parking Spaces

208.1 General. Where parking spaces are provided, parking spaces shall be provided in accordance with 208.

EXCEPTION: Parking spaces used exclusively for buses, trucks, other delivery vehicles, law enforcement vehicles, or vehicular impound shall not be required to comply with 208 provided that lots accessed by the public are provided with a passenger loading zone complying with 503.

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
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20, plus 1 for each 100, or fraction thereof, over 1000

Advisory 208.2 Minimum Number. The term "parking facility" is used Section 208.2 instead of the term "parking lot" so that it is clear that both parking lots and parking structures are required to comply with this section. The number of parking spaces required to be accessible is to be calculated

separately for each parking facility; the required number is not to be based on the total number of parking spaces provided in all of the parking facilities provided on the site.

208.2.3.3 Parking for Guests, Employees, and Other Non-Residents. Where parking spaces are provided for persons other than residents, parking shall be provided in accordance with Table 208.2.

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.

EXCEPTIONS:

1. All van parking spaces shall be permitted to be grouped on one level within a multi-story parking facility.
2. Parking spaces shall be permitted to be located in different parking facilities if substantially equivalent or greater accessibility is provided in terms of distance from an accessible entrance or entrances, parking fee, and user convenience.

Advisory 208.3.1 General Exception 2. Factors that could affect "user convenience" include, but are not limited to, protection from the weather, security, lighting, and comparative maintenance of the alternative parking site.

302 Floor or Ground Surfaces

302.1 General. Floor and ground surfaces shall be stable, firm, and slip resistant and shall comply with 302.

Information Gathered Thus Far

The School's parking facilities include Lots 1 and 2, which are located at the southern end of the School and serve the School's pre-kindergarten entrance, as well as a third parking facility located at the School's northern end, which serves other School entrances. The School's southern parking facilities include an asphalt loop, which is accessible from the adjacent street at two entrances located at the top of the loop (as well as from the northern parking facility) and the bottom of the loop. Lot 1 consists of a discrete rectangular asphalt area located in the center of the loop, and Lot 2 consists of several angled parking spaces, including 1 designated accessible space, located on the inner side of the northern half of the loop.

Based upon OCR's review of photographs of Lots 1 and 2 provided by the District and Complainant, OCR noted the following compliance concerns: Lot 1 appears to have no designated parking spaces, including accessible spaces, and there appears to be a steep embankment on the route leading from Lot 1 to the School's pre-kindergarten entrance. Regarding Lot 2, the sign identifying the accessible space does not designate the space as van accessible. In addition, the Complainant submitted pictures of Lots 1 and 2, including pictures she claims depict closed gates blocking access to the accessible space in Lot 2 during the School's designated times for pick up and drop off of pre-kindergarten students. Finally, in its data response to OCR, the District acknowledged it sometimes restricts access to the School's southern parking lots during the school day.

According to the District, the southern parking lots were constructed in 1971;¹ however, the District was unable to identify the most recent dates of alteration, including the dates of any restriping. In addition, the District notified OCR that it intended to stripe Lot 1 in the near future and had recently priced building materials to ensure there was an accessible route from Lot 1 to the School.

Resolution Agreement

Prior to OCR determining the appropriate accessibility standard to employ in examining the parking facilities and making any compliance determinations, the District submitted the enclosed executed Agreement. In the Agreement, the District agreed to resolve this complaint by ensuring that Lots 1 and 2 and the routes from these lots to the School comply with the applicable regulations in the 2010 ADA Standards, as detailed in the attached Agreement. The Agreement requires the District to review the parking facilities at the School, as well as the routes leading from them to the School, and develop a written plan identifying the modifications that are necessary to ensure they are accessible to and usable by persons with mobility disabilities in accordance with Section 504, Title II, and the 2010 ADA Standards. As part of this process, the District will consult with appropriate professionals knowledgeable about accessible parking facilities and routes.

OCR will monitor the District's implementation of this 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 with Section 504 and Title II.

Conclusion

This concludes OCR's investigation of this complaint. 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 the 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. In the event that OCR receives such a request, we will

¹ In its data response, the District identifies Lots 1 and 2 as the School's "lower parking lot."

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 Daniel Sorbera, Equal Opportunity Specialist, at (404) 974-9466, or me, at (404) 974-9367.

Sincerely,

Ebony Calloway, Esq.
Compliance Team Leader

Enclosure

cc: XXXXX XXXXXXXX (via email)